

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals of the District of Columbia.

OCTOBER TERM, 1916.

No. 2989.

358

AMERICAN ELEMENTARY ELECTRIC COMPANY, A CORPORATION OF THE DISTRICT OF COLUMBIA, AND GEORGE S. ENGLE, INDIVIDUALLY AND AS GENERAL MANAGER AND SOLE EXECUTIVE COMMITTEE OF SAID CORPORATION, AND AMERICAN ELEMENTARY ELECTRIC COMPANY, A CORPORATION OF THE STATE OF ARIZONA, APPELLANTS,

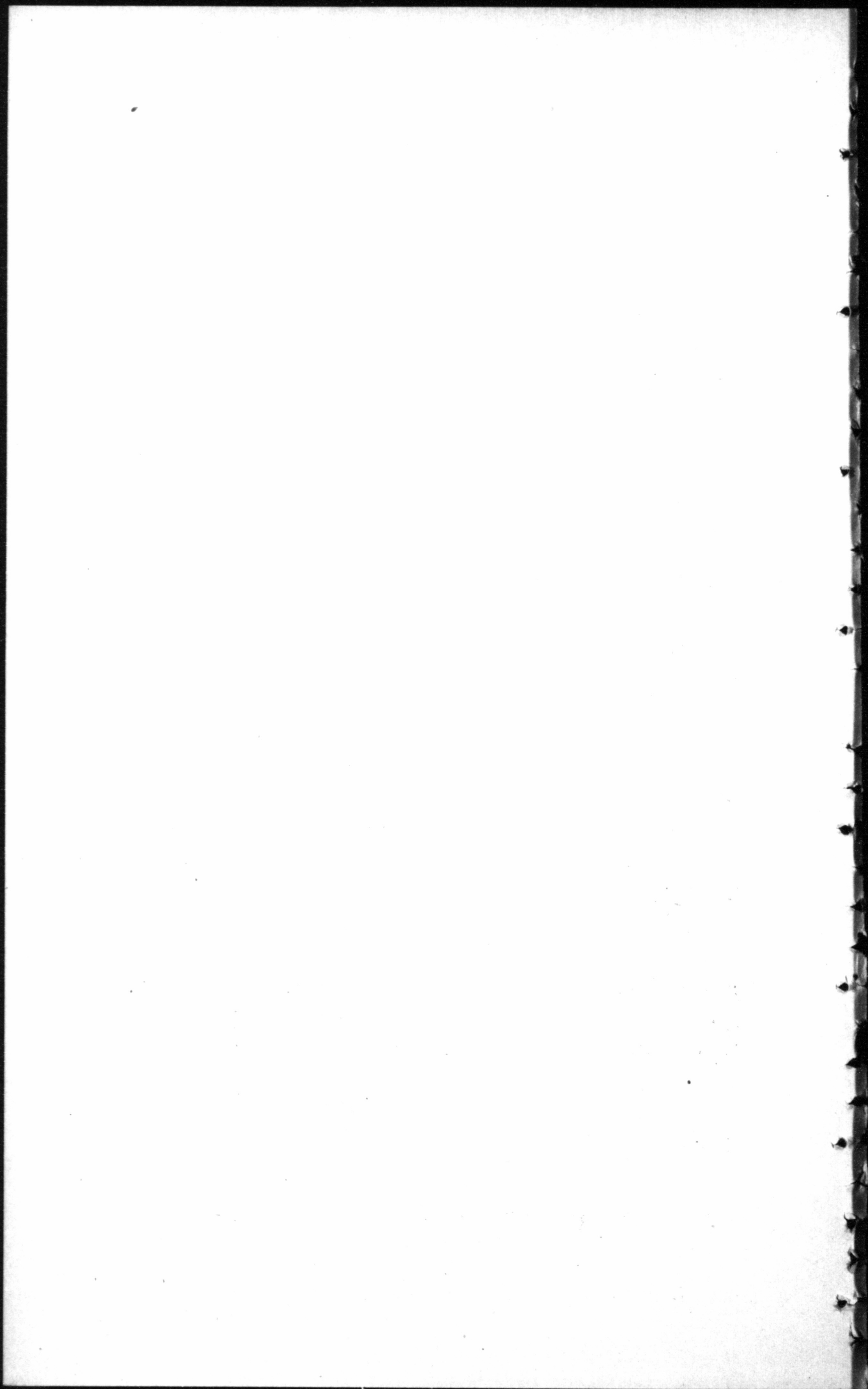
vs.

CHARLES R. NORMANDY, H. C. HALLAM, C. KEISER,
ET AL., APPELLEES.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED JULY 10, 1916.

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Court of Appeals of the District of Columbia.

OCTOBER TERM, 1916.

No. 2989.

AMERICAN ELEMENTARY ELECTRIC COMPANY, A CORPORATION OF THE DISTRICT OF COLUMBIA, AND GEORGE S. ENGLE, INDIVIDUALLY AND AS GENERAL MANAGER AND SOLE EXECUTIVE COMMITTEE OF SAID CORPORATION, AND AMERICAN ELEMENTARY ELECTRIC COMPANY, A CORPORATION OF THE STATE OF ARIZONA, APPELLANTS,

vs.

CHARLES R. NORMANDY, H. C. HALLAM, C. KEISER, C. A. BOWMAN, C. G. GARDNER, A. L. SAMPSON, J. B. PRICE, JOHN W. GEIGER, P. H. HEIRONIMUS, E. G. RYAN, E. G. VAN BUSKIRK, E. B. WILLIAMS, VINCENT A. SMITH, WM. J. GAMMELL, CHARLES A. SMITH, MARGUERITE A. SMITH, E. R. ROCHESTER, JOHN A. NICOL, MARY B. NICOL, CARY NICOL, MAX C. J. WIEHLE, F. FLEISHELL, D. F. SAUM, ELIZABETH L. SAUM, E. G. BUELL, F. BAISOT, J. LEE CHANDLER, IDA M. CLARK, FRANCIS B. CROWELL, MARTHA A. CHAPIN, M. FLORENCE DRABELLE, J. W. DUNMIRE, T. F. DRAKE, H. M. GUMM, MARGARET HANNON, CHRISTIAN A. HEINEKIN, JR., C. P. HEINEKIN, ANDREAS HOFMAN, F. H. HOLETON, J. E. HUDSON, A. D. ISHERWOOD, PAULINE M. KOCH, ELIZABETH H. MARSHALL, W. H. NASELIUS, CHARLES M. TAMM, PHOEBE L. VAIL, P. P. WILLIAMSON, L. A. MOONEY, WM. P. RIPLEY, WM. J. GANS, MEYER KILBERT, WM. HARTFORD, A. E. SMITH, AND CHARLES J. MURPHY, APPELLEES.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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Court of Appeals of the District of Columbia.

No. 2989.

AMERICAN ELEMENTARY ELECTRIC COMPANY, etc., et al., Appellants,
vs.
CHARLES R. NORMANDY, H. C. HALLAM, C. KEISER, et al., Appellees.

a Supreme Court of the District of Columbia.

In Equity. No. 33856.

CHARLES R. NORMANDY, H. C. HALLAM, C. KEISER, C. A. BOWMAN,
C. G. Gardner, A. L. Sampson, J. B. Price, John W. Geiger, P. H.
Heironimus, E. G. Ryan, E. G. Van Buskirk, E. B. Williams,
Vincent A. Smith, Wm. J. Gammell, Charles A. Smith, Mar-
guerite A. Smith, E. R. Rochester, John A. Nicol, Mary B. Nicol,
Cary Nicol, Max C. J. Wiehle, F. Fleishell, D. F. Saum, Elizabeth
L. Saum, E. G. Buell, F. Baissot, J. Lee Chandler, Ida M. Clark,
Francis B. Crowell, Martha A. Chapin, M. Florence Drabelle,
J. W. Dunmire, T. F. Drake, H. M. Gumm, Margaret Hannon,
Christian A. Heinekin, Jr., C. P. Heinekin, Andreas Hofman,
F. H. Holeton, J. E. Hudson, A. D. Isherwood, Pauline M. Koch,
Elizabeth H. Marshall, W. H. Naselius, Charles M. Tamm, Phoebe
L. Vail, P. P. Williamson, L. A. Mooney, Wm. P. Ripley, Wm.
J. Gans, Meyer Kilbert, Wm. Hartford, A. E. Smith, and Charles
J. Murphy, Plaintiffs,

vs.

AMERICAN ELEMENTARY ELECTRIC COMPANY, a Corporation of the
District of Columbia, and George S. Engle, Individually and as
General Manager and Sole Executive Committee of said Corpora-
tion, and American Elementary Electric Company, a Corporation
of the State of Arizona, Defendants.

Be it remembered, That in the Supreme Court of the District of
Columbia, at the City of Washington, in said District, at the times
hereinafter mentioned, the following papers were filed and proceed-
ings had, in the above-entitled cause, to wit:—

Bill of Complaint.

Filed October 23, 1915.

In the Supreme Court of the District of Columbia, Holding an
Equity Court.

Equity. No. 33856.

CHARLES R. NORMANDY, H. C. HALLAM, C. KEISER, C. A. BOWMAN,
C. G. Gardner, A. L. Sampson, J. B. Price, John W. Geiger, P. H.
Heironimus, E. G. Ryan, E. G. Van Buskirk, E. B. Williams,
Vincent A. Smith, Wm. J. Gammell, Charles A. Smith, Mar-
guerite A. Smith, E. R. Rochester, John A. Nicol, Mary B. Nicol,
Cary Nicol, Max C. J. Wiehle, F. Fleishell, D. F. Saum, Elizabeth
L. Saum, E. G. Buell, F. Baissot, J. Lee Chandler, Ida M. Clark,
Francis B. Crowell, Martha A. Chapin, M. Florence Drabelle,
J. W. Dunmire, T. F. Drake, H. M. Gumm, Margaret Hannon,
Christian A. Heinekin, Jr., C. P. Heinekin, Andreas Hofman,
F. H. Holeton, J. E. Hudson, A. D. Isherwood, Pauline M. Koch,
Elizabeth H. Marshall, W. H. Naselius, Charles M. Tamm, Phœbe
L. Vail, P. P. Williamson, L. A. Mooney, Wm. P. Ripley, Wm.
J. Gans, Meyer Kilbert, Wm. Hartford, A. E. Smith, and Charles
J. Murphy, Plaintiffs,

vs.

AMERICAN ELEMENTARY ELECTRIC COMPANY, a Corporation of the
District of Columbia, and George S. Engle, Individually and as
General Manager and Sole Executive Committee of said Corpora-
tion, and American Elementary Electric Company, a Corporation
of the State of Arizona, Defendants.

To the Supreme Court of the District of Columbia, Holding an
Equity Court:

The Bill of Complaint of the Plaintiffs respectfully shows to the
Court, as follows:—

- 2 1. That the plaintiffs Charles R. Normandy, H. C. Hallam,
C. Keiser, C. A. Bowman, C. G. Gardner, A. L. Sampson,
J. B. Price, P. H. Heironimus, E. G. Ryan, E. G. Van Buskirk, E. B.
Williams, Vincent A. Smith, William J. Gammell, Charles A. Smith,
Marguerite A. Smith, E. R. Rochester, John A. Nicol, Mary B.
Nicol, Cary Nicol, Max C. J. Wiehle, F. Fleishell and A. E. Smith
are citizens of the United States and residents of the City of Wash-
ington, District of Columbia, and the Plaintiffs D. F. Saum, Eliza-
beth L. Saum, E. G. Buell, F. Baissot, J. Lee Chandler, Ida M.
Clark, Francis B. Crowell, Martha A. Chapin, M. Florence Drabelle,
J. W. Dunmire, T. F. Drake, H. M. Gumm, Margaret Hannon,
Christian A. Heinekin, Jr., C. P. Heinekin, Andreas Hofman, F. H.
Holeton, J. E. Hudson, Armina D. Isherwood, Pauline M. Koch,
Elisabeth H. Marshall, W. H. Naselius, Chas. M. Tamm, Phœbe L.

Vail, P. P. Williamson, L. A. Mooney, Wm. J. Gans, John W. Geiger, Meyer Kilbert and Wm. Hartford, are citizens of the United States and non-residents of the District of Columbia, residing in the States of California, Connecticut, Florida, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, New York, North Dakota, Pennsylvania, South Carolina, Texas and Virginia, and all of said plaintiffs, having a community of interests as security owners and stockholders of the American Elementary Electric Company, a corporation of the District of Columbia, bring this suit in their own right and in behalf of such other persons in like situation, who may desire to join in this proceeding and contribute to the costs thereof.

3 2. The defendant American Elementary Electric Company, is a corporation under the provisions of the laws of the District of Columbia, with authorized capital stock of Twenty-five Million Dollars (\$25,000,000.00) divided into two hundred and fifty thousand shares of a par value of One Hundred Dollars (\$100.00) per share, and the said defendant corporation is sued in its corporate capacity.

3. The defendant George S. Engle, is a citizen of the United States and a resident of the District of Columbia, and is sued individually and as general manager and sole executive committee, and as a stockholder of the defendant American Elementary Electric Company, a corporation of the District of Columbia.

4. The defendant, American Elementary Electric Company, as plaintiffs are informed and believe and therefore aver, is a corporation organized and chartered under the laws of the State of Arizona, with an authorized capital stock of twenty-five Million Dollars (\$25,000,000.00) divided into two hundred and fifty thousand shares of the par value of One Hundred Dollars (\$100) per share, and said corporation maintains an office in the City of Washington, District of Columbia, and is sued in its corporate capacity.

5. That the plaintiffs hereto are the owners of a large portion of the capital stock and securities of the defendant American Elementary Electric Company, a corporation under the laws of the District of Columbia, now outstanding and as such respectfully show to the Court that they, together with others in like situation, but not parties to this Bill of Complaint, paid to the defendant George S. Engle, in his capacity as General Manager and sole executive committee of said corporation, a large sum of money aggregating about twenty-six Thousand Dollars (\$26,000.00).

4 Plaintiffs are informed and believe and therefore aver that at the time of the sale to them and to others similarly situated of the securities of the defendant, American Elementary Electric Company of the District of Columbia, known as and called "State Option Contracts, Series A and B" of said defendant corporation, the defendant George S. Engle, who was then claiming to be the general manager and sole executive committee of the said corporation, held in his own name a large majority of the capital stock of said corporation, to-wit, about \$20,000,000.00 of the \$25,000,000.00 authorized capital stock of said company and claimed to own the same in consideration of his con-

veyance to said corporation of certain United States Letters Patent and certain pending applications for certain United States Letters Patent covering and protecting a certain electric battery, known as and called "Engle Primary Battery," and with reference to the stock holdings of the said defendant George S. Engle, plaintiffs say that said stock was fraudulent and void, for the reason that all of said stock was illegally issued and delivered to said Engle, upon his false statements and representations regarding said "Engle Primary Battery," which said false and fraudulent statements and

5 representations were in substance—that said battery was a perfected battery which could commercially compete with dynamos in producing and furnishing power, light and heat; that said battery was cheaper to operate than any other known electric battery; that said battery could be used for one year without renewal; that when two of said batteries were connected together with a time clock said batteries could be so operated as to generate electrical energy continuously, as it was so constituted that while one of the said two batteries was at rest, it would recuperate its energy, during which time the other of said two batteries would be in active operation; that said battery was self regenerating and would recuperate when said battery was at rest; that it was so constituted, by reason of a certain secret formula, which was discovered by and was known only to the said George S. Engle; that by the use of two of the said batteries, so connected together as aforesaid, an electric automobile could be driven from the District of Columbia to the Pacific Coast, with the energy furnished by said batteries, without renewing any of the chemicals of said batteries; that said battery produced more energy than any other known electric battery of equal size, weight and cost; that said battery was capable of heating and lighting at a cost approximately one-tenth of the cost of heating and lighting the same with coal or any other fuel in use at the current prices of such fuel; that by said battery electricity was drawn from the air, and the molecules broken up by the action of the electrolyte upon the metal plates therein; that the said battery performed by

6 chemical action and reaction what a dynamo performed mechanically; that said battery would run commercially for a year without attendance, renewal or expense; that said battery recuperated automatically in one-half the time it took it to discharge; and that the advantages and superiority of the said battery over all other electric batteries were due to the said certain secret formula used in the preparation of the electrolyte of said battery, and in the preparation of the plates of said battery, which said secret formula was discovered by and known only to him, the said George S. Engle; all of which said representations and pretenses aforesaid were false and fraudulent and well known to the said George S. Engle to be false and fraudulent at the time of making same; and by color and means of which said false pretenses and representations aforesaid, the said defendant procured and caused to be issued unto himself about \$20,000,000 worth of the capital stock of the defendant, American Elementary Electric Company of the District of Columbia;—

plaintiffs attach hereto and ask to be considered as their Exhibit A, the report of S. W. Stratton of the U. S. Bureau of Standards.

6. That after the defendant George S. Engle had obtained the control of the capital stock of the defendant American Elementary Electric Company, a corporation of the District of Columbia, in the manner and by the means fully set forth in Paragraph Five hereof, he was able to obtain absolute domination of said corporation, through the voting of the large majority of its stock and by means thereof was able to and did place in office, various officers and di-

7 rectors of said corporation, who owned their appointments solely to him and did, through the directors of said corporation, procure for himself the absolute control and administration of the defendant corporation's affairs, business and policies, having himself elected by said directors as General Manager and sole executive committee of said corporation, and in his capacity as such general manager and sole executive committee, exercised absolute control of the business, affairs and policies of said corporation, including the issuance of its State Option Contracts, Series A and B and its capital stock, as well as the plans for the sale of its various securities and did thereby come into control of the funds of said corporation, received by him, in his trust capacity of said corporation, from the sale of securities of said corporation, all of which said authority and control was obtained by the said defendant Engle, through the voting of the capital stock of said corporation issued to him upon his false and fraudulent representations, regarding said certain electrical battery, known as and called "Engle Primary Battery."

Plaintiffs are informed and believe and therefore aver that the said defendant Engle, in his own personal interest, and not in the interest of the American Elementary Electric Company of the District of Columbia, required the directors and officers of the said defendant corporation, chosen by his majority stock control, to file with him immediately after their election, their resignations as officers and directors of said corporation, to be by him held and acted upon at his pleasure, thereby making said corporation a one-man concern, controlled and operated for the benefit and in the interest

8 of the one man, namely George S. Engle, to the injury and damage of your plaintiffs, and all others who invested their funds in the securities and stocks of said corporation.

7. That after the said defendant George S. Engle had obtained full and absolute control of the business and affairs of the defendant corporation, American Elementary Electric Company of the District of Columbia, in the manner and by the means fully set forth in Paragraph Five hereof, claiming to act for said corporation as its alleged general manager and sole executive committee, undertook to sell and did sell personally, through agents, by mail and otherwise, to plaintiffs and to many other persons in the various states of the United States the certain securities of said corporation, known as and called, State Option Contracts, Series A and B, of said defendant corporation, to an amount approximating more than Sixty five Thousand Dollars (\$65,000.00), and as the trust officer of said

corporation did receive said amount in cash, according to the best knowledge, information and belief of your plaintiffs.

Plaintiffs are informed and believe and therefore aver that the said defendant George S. Engle has appropriated to his own use, or secreted substantially all of said large amount of money of the said defendant American Elementary Electric Company a corporation of the District of Columbia, and has failed, refused and still refuses to account therefor to said defendant corporation, or to your plaintiffs, as the owners of the securities of the said defendant corporation, under the specious, false and fraudulent contention, that said

9 funds belong to him personally and not to said corporation, his contention being that said funds were by him received as purchase money for his private stock in said corporation, and not received by him in his capacity as General Manager and sole executive committee of said corporation, as purchase money for the securities of said corporation, known as and styled "State Option Contracts, Series A and B." The said defendant Engle makes this contention under his oath and affirmation in his answer to a Bill of Complaint filed against him and said American Elementary Electric Company of the District of Columbia, in this Honorable Court in a cause entitled, "C. A. Smith, et al, vs. American Elementary Electric Company, George S. Engle, et al., Equity No. 32589," which said oath and affirmation are hereby referred to.

That the contention of the said George S. Engle, as set out in this Paragraph to the effect that the large sums of money, aggregating more than \$65,000.00, belongs to him personally and not to the corporation, is false and fraudulent, for that the said funds were received by the said Engle as proceeds from the sale of the securities of the said American Elementary Electric Company known as and called State Option Contracts, Series A and B of said corporation, and not from the sale of the private stock of the said Engle, as by him contended.

8. As by reference to the Certificate of Incorporation of the American Elementary Electric Company of the District of Columbia, the general objects for which the defendant corporation was incorporated are:

10 "For the purpose of conducting a general manufacturing business, in all details, anywhere in the world. Manufacturing, buying, selling and dealing — any and all kinds of goods, wares and merchandise, including dynelectrons, all kinds of power, heating and illuminating plants. Issue and transfer all notes, bonds and other evidence of indebtedness, contracts, franchise, patent, patent rights, trade marks, privilege and etc., and in connection with the above to engage in any line of business necessary or convenient for the best interests of the company, not inconsistent with the law, acquiring or disposing of the necessary real estate and to have all other rights, powers and privileges conferred by the laws upon corporation."

The plaintiffs aver that for a short period of time after the defendant George S. Engle had obtained absolute control of the said defendant American Elementary Electric Company of the District

of Columbia, in the manner and by the means fully set out in Paragraph Five hereof, the said defendant corporation by and through the said Engle, as its general manager and sole executive committee, undertook in a most ineffective, wreckleless, promotive and fraudulent manner, to carry out some of the corporation objects of the said defendant corporation, but your plaintiffs show that on or about October of the year 1914, the defendant corporation, American Elementary Electric Company of the District of Columbia, with the approval, by the request, under the direction and absolute control of the said defendant Engle, through the majority stock control, fraudulently obtained and procured by said Engle in the manner and by the means fully set out in Paragraph Five hereof, in derogation, breach and absolute disregard of the vested rights of the plaintiffs and other persons in like situation, did entirely abandon and attempt to put out of existence the said defendant American Elementary Electric Company of the District of Columbia, by

11 abandonment of its charter and charter rights and since said month of October, 1914, the said defendant American Elementary Electric Company of the District of Columbia has held no stockholders' or directors' meetings and has had no executive management whatever and has, according to the best knowledge, information and belief of your plaintiffs, transacted no business whatever in the interest or advancement of the purposes for which said corporation was formed, and in that manner the vested rights of your plaintiffs, as the owners of the securities of said corporation and stockholders therein, have been abandoned and left in a state of absolute neglect.

9. The plaintiffs are informed and believe, and therefore aver that in the latter part of the year 1914, the defendant American Elementary Electric Company of the District of Columbia, by and through the absolute domination and control of the defendant George S. Engle, through the voting of his large majority of stock in said corporation, fraudulently obtained and procured in the manner and by the means fully set out in Paragraph Five hereof attempted to convey, transfer, assign and deliver all of its assets, consisting of United States Letters Patent, pending applications for United States Letters Patent, moneys, assets, contracts, and all and singular its properties, to an alleged new corporation of the same name and same amount of capital stock, organized under the corporate laws of the State of Arizona, without any valuable consideration accruing to said American Elementary Electric Company of the District of Columbia, or to the plaintiffs, as the owners of the securities and stock of said corporation, and in breach and derogation of their

12 vested rights as such.

The plaintiffs further show upon information and belief that the defendant American Elementary Electric Company, chartered under the laws of the State of Arizona, is financially irresponsible and possessed of no property or assets of any kind, character, nature or description, other than such as was attempted to be conveyed, transferred and assigned to it by the defendant American Elementary Electric Company of the District of Columbia, without

a valuable consideration aforesaid, and the plaintiffs verily believe that if the said American Elementary Electric Company of the State of Arizona, is permitted to continue in the possession of the properties, assets and franchises of the defendant American Elementary Electric Company of the District of Columbia, so as aforesaid attempted to be conveyed, assigned and transferred, the vested rights of the plaintiffs, as holders of the securities and stock of said American Elementary Electric Company of the District of Columbia will be entirely dissipated and the value of their said securities and stock will be wholly destroyed to their irreparable damage and loss, for which they could have no adequate remedy at law.

10. Plaintiffs further respectfully show that a number of them have been denied admission to the stockholders' meetings of the American Elementary Electric Company of the State of Arizona, and have been denied all information with respect to the plans and policies of said new corporation and they have never been able to procure any showing or information as to the terms, conditions, nature

and extent of the alleged transfer and assignment, claimed to
13 have been made by the American Elementary Electric Company of the District of Columbia to the said American Elementary Electric Company of the State of Arizona, nor have they ever realized or been paid anything on account of their securities of the American Elementary Electric Company of the District of Columbia from the proceeds of the alleged sale of all of its assets to the American Elementary Electric Company of the State of Arizona, nor have they been offered any state option contracts of the said new corporation, or anything else of value for their securities in said American Elementary Electric Company of the District of Columbia.

And plaintiffs further show that if said pretended transfer and sale of all of the assets of the said American Elementary Electric Company of the District of Columbia has been made to the American Elementary Electric Company of the State of Arizona, it has been done without their consent, or privity and against their wishes and that the same is a fraud upon their rights as owners of the securities and stock of the American Elementary Electric Company of the District of Columbia; and they aver that said transfer was without valuable consideration either to said defendant corporation of the District of Columbia, or to your plaintiffs as the owners of its securities and stock.

11. Plaintiffs are informed and believe and therefore aver that a sum of money aggregating more than \$65,000.00 was received by the said defendant George S. Engle, from the sale of the securities of the American Elementary Electric Company of the District of Columbia, known as and called State Option Contracts, Series A and

B, in his trust capacity as General Manager and Sole Executive
14 Committee of said corporation, but notwithstanding this fact, your plaintiffs verily believe and therefore allege that the said defendant Engle has squandered, misappropriated, dissipated, wasted or secreted substantially all of said amount; that if any portion of said large sum of money still remains unexpended and unappropriated by the said Engle, said remainder, according to the best

belief of your plaintiffs will be expended, misappropriated or se-
creted by the said Engle, unless some quick relief is awarded your
plaintiffs by this Honorable Court, and thus the vested rights of the
plaintiffs, as the owners of the securities and stock of the American
Elementary Electric Company of the District of Columbia, will be
irreparably and irretrievably destroyed.

12. Plaintiffs further aver that since October of the year 1914,
they, as owners of the securities and stock of the American Ele-
mentary Electric Company of the District of Columbia, have been
given no notice of any of the meetings of the stockholders or directors
of the pretended new corporation, styled, American Elementary
Electric Company of the State of Arizona, and in fact, all of your
plaintiffs who have applied for admission to the stockholders' and
directors' meetings of the said new corporation have been refused
admission thereto and have been denied any rights whatever to
participate in said meetings or to learn anything about said com-
pany's affairs and have been refused all information regarding the
plans and policies of the said alleged new corporation, notwithstand-

15 ing the fact that all of the assets, rights and franchises of the
American Elementary Electric Company of the District of
Columbia, the securities and stock of which plaintiffs are
the owners, are alleged and claimed to have been conveyed, assigned
and transferred to said alleged new American Elementary Electric
Company of the State of Arizona.

13. Plaintiffs further aver that at the hearings of Equity Cause
No. 32589, entitled "C. A. Smith, et al., vs. American Elementary
Electric Company, George S. Engle, et al.," in this Honorable Court,
the testimony given showed the conduct of said defendant George
S. Engle to have been so flagrant and criminal that the testimony
taken in said cause was referred by this Honorable Court to the
United States District Attorney, of the District of Columbia for
investigation, and your plaintiffs are informed and believe and
therefore aver that the District Attorney of said District made a
full investigation of the matter and subsequently submitted the
facts of the case to the Grand Jury of this Honorable Court, who,
on to-wit, the 4th day of August, 1915, returned an indictment
against said George S. Engle, charging him in seven counts with
the criminal offense of false pretenses, the specific charges contained
in the seven counts of said indictment being that said defendant
Engle obtained from John A. Nicol and M. B. Nicol large sums of
money by color and means of false and fraudulent pretenses and
representations in regard to a certain electric battery, known as and
called "Engle Primary Battery;" the said indictment against the
said George S. Engle is now pending for trial in the criminal divi-
sion of this Honorable Court and the said Engle is under a bond in

16 the sum of \$5,000 to appear for trial in said Court; but,
notwithstanding the said alleged misconduct and indictment
of said Engle thereon, he still assumes to control all of the
moneys, assets and affairs of the defendants American Elementary
Electric Company of the District of Columbia and the American
Elementary Electric Company of the State of Arizona, whereas

in justice and protection of the vested rights of the plaintiff herein as the owners of the securities and stock of the American Elementary Electric Company of the District of Columbia, the business, moneys and affairs of said corporations should be in charge of a Receiver duly appointed by this Honorable Court.

14. The plaintiffs further show, according to their best knowledge, information and belief, that the defendant George S. Engle has taken or attempted to take substantially the same amount of the capital stock of the American Elementary Electric Company of the State of Arizona as he had in the American Elementary Electric Company of the District of Columbia, in the same manner and by the same means as fully set out in Paragraph Five hereof and through his majority stock in said alleged new corporation, absolutely dominates and controls its business, affairs, funds and assets.

15. Plaintiffs further aver that a number of civil suits have been filed in this Honorable Court against the American Elementary Electric Company of the District of Columbia, and George S.

17 Engle individually, involving large sums and said civil actions are now pending in this Court for trial against said defendants and your plaintiffs verily believe and therefore aver that said civil suits will not be diligently and carefully defended by the defendants in the interest of your plaintiffs, as the owners of securities and stock of said corporation, but on the contrary will be defended in a manner detrimental to and destructive of the vested rights of your plaintiffs, as the owners of securities and stock of said corporation, as aforesaid.

16. By reason of the mismanagement and misconduct of the said defendant, George S. Engle, in his capacity as General Manager and Sole Executive Committee of the defendant, American Elementary Electric Company of the District of Columbia, as hereinabove set out, the plaintiffs are justly apprehensive that the properties rights and franchises of said defendant corporation, will speedily be totally dissipated and destroyed to the manifest injury of its creditors, if any, as well as of your plaintiffs, and other holders and owners of securities and stock of the corporation, unless this Honorable Court take immediate possession and control of said corporation by a Receiver.

17. Plaintiffs are advised and believe and therefore aver that by reason of the premises hereinabove stated, they are entitled to have the equitable aid of this Honorable Court to the end that the above recited attempted sale and conveyance from the American Elementary Electric Company of the District of Columbia to the Amer-

18 ican Elementary Electric Company of the State of Arizona, may be set aside, vacated, and held for naught and their rights and interests in the properties, assets and franchises, thereby sought to be disposed of, may be secured, preserved and restored; and that they are further informed and believe and therefore aver that by reason of the premises, the defendant George S. Engle is not a fit and suitable person to be entrusted with the further administration of the trusts reposed in him, by the said American Elementary Electric Company of the District of Columbia, and a

receiver should be appointed to take charge of and administer the business, affairs, assets and funds of said American Elementary Electric Company of the District of Columbia, including as well all of the assets, funds, rights and franchises attempted to have been conveyed by said American Elementary Electric Company of the District of Columbia, to an alleged new corporation styled American Elementary Electric Company of the State of Arizona.

Wherefore, and because they are without adequate remedy at law, the plaintiffs respectfully pray as follows:

1. That the American Elementary Electric Company of the District of Columbia, and George S. Engle, individually and as General Manager and Sole Executive Committee and stockholder of American Elementary Electric Company of the District of Columbia, and American Elementary Electric Company of the State of Arizona, may be made parties to this bill, served with process and required to answer the exigencies of this bill.

2. That the defendant, George S. Engle, individually and in his capacity as President, General Manager and Sole Executive Committee of the American Elementary Electric Company of the
19 District of Columbia, may be required to discover under oath when the said attempted sale and conveyance from the American Elementary Electric Company of the District of Columbia, of all its properties, rights and franchises was made or attempted to be made to the American Elementary Electric Company of the State of Arizona, and in detail the terms and conditions of said sale or attempted sale, particularly the purchase price which the said American Elementary Electric Company of the State of Arizona paid to the American Elementary Electric Company of the District of Columbia, for all of its properties, rights and franchises; and a complete statement of the authorized, issued and paid in capital stock of said American Elementary Electric Company of the State of Arizona, the name and address of each and every stockholder thereof, the holdings of each said stockholder and the amount actually paid in, in cash or otherwise, specifying the mode, time or times of payment in each instance, together with a list of the officers and directors of each of the defendant corporations; by whom (giving the names of each and every person in the corporation), the said attempted sale or conveyance from the defendant American Elementary Electric Company of the District of Columbia to the defendant American Elementary Electric Company of the State of Arizona was consummated, upon what arrangement as to payment of compensation for services in that regard, as to fees, commissions or otherwise, and what compensation has in fact been made to any person or persons, or corporation in that connection; and furthermore that the said defendant George S. Eagle, individually
20 and in his capacity as President, General Manager and Sole Executive Committee of the defendant American Elementary Electric Company of the District of Columbia, discover under oath and in the fullest detail what disposition he has made of the large sum of money, to-wit more than \$65,000.00 paid to him

by your plaintiffs and others, in behalf of said defendant corporation for its securities, consisting of State Option Contracts, Series A and B.

3. That the above recited sale and conveyance or attempted sale and conveyance from the American Elementary Electric Company of the District of Columbia to the American Elementary Electric Company of the State of Arizona and any and all other transactions which may have taken place between the two defendant corporations, be vacated, set aside and for naught held.

4. That the Rule of this Honorable Court may issue to the defendants and each of them to show cause on a day certain therein to be named why a receiver or receivers should not be appointed by the Court to take charge of, collect, manage, operate, conduct carry on and administer the business affairs, property assets and credits, real personal and mixed, of any and every kind, character and description, sold and conveyed, or attempted to be sold and conveyed by the defendant American Elementary Electric Company of the District of Columbia to the American Elementary Electric Company of the State of Arizona, pending the final disposition of this cause, or until the further order of the Court and under its supervision and direction.

5. That all proper accounts may be taken between the plaintiffs and defendants hereto jointly and severally, by reference to the Auditor of this Court, or in such other manner as the Court
21 may direct.

6. And that the plaintiffs may have such other and further relief as the nature of their case may require.

JAMES W. McNEILL,
Attorney for the Plaintiffs.

DISTRICT OF COLUMBIA, ss:

We, the undersigned, being first duly sworn, upon oath depose and say that we are complainants in the foregoing Bill of Complaint and have a community of interest with all other plaintiffs not subscribing hereto, and make this affidavit in our own behalf and in behalf of our co-complainants; that we have (heard) read said Bill of Complaint and know the contents thereof and that the statements therein made of our own knowledge are true, and those made upon information and belief, we believe to be true.

CHAS. R. NORMANDY.
WM. J. GAMMELL.
VINCENT A. SMITH.
C. G. GARDNER.
JNO. A. NICOL.
MRS. F. FLEISHELL.
M. B. NICOL.
CHARLES A. SMITH.
P. H. HEIRONIMUS.

Subscribed and sworn to before me this the 21st day of October,
A. D. 1915.

[SEAL.]

ANNIE E. BRAKE,
Notary Public, D. C.

22

“PLAINTIFFS’ EXHIBIT A.”

P. G. A. R. H. D.

Department of Commerce,
Bureau of Standards.

Address Reply to Bureau of Standards.

WASHINGTON, January 21, 1914.

American Elementary Electric Company, 108 Second St., S. W.,
Washington, D. C.

GENTLEMEN: The following are the results of the test just completed on four cells of the Engle battery. The purpose of the test was to determine the zinc consumption per ampere-hour of output

The four cells were connected in series and discharged at 0.85 ampere, the discharge being continuous for 8 hours each day for ten days.

Cell No.	Total zinc consumption.
1.....	84.9 grams.
2.....	86.0 “
3.....	84.9 “
4.....	84.5 “
Average.....	85.1 “

Measured discharge	68.2 ampere-hours
Zinc consumption	1.25 grams per amp.-hr.
Accepted value of the electrochemical equivalent of zinc.....	1.22”
Voltage on Discharge, per cell approx.	0.8 Volt.
Power output per cell during test “	0.7 Watt.

The test shows that the zinc consumption is slightly greater than the value calculated from the value of the electrochemical
23 equivalent, the difference being readily accounted for by local action. This accords with the behavior of other primary batteries.

The production of electrical energy from a battery by the consumption of zinc is analogous to producing it by means of a steam engine and dynamo, coal being consumed under the boiler. Hence the price of zinc and the price of coal are very important factors in the cost of the commercial generation of electric current by the two respective methods. As will be shown in detail below, the relative price of zinc and coal are such that the cost of electric power per kilowatt-hour is many times as great when generated by a zinc battery as when generated by an engine-driven dynamo. This divides the commercial application of electricity roughly into two classes:

1st. The field of the primary battery, which includes those applications in which the cost of the electric energy is secondary in

importance to other considerations, such as convenience, portability and the like.

2nd. The general field of commercial electric power, lighting and heating, in which the low cost of electric energy is very essential.

These facts which we have been urging upon you all along, would make the above test entirely unnecessary to one who accepts the fundamental facts and principles of physics and engineering. Yet as you were unwilling to accept these facts and principles, we have carried out the test in order to convince you of their validity by numerical values determined under conditions fixed by yourselves.

24 The test shows conclusively that the statement made in your "Bulletin" No. 3 dated December 23, 1913, that you had attained an efficiency "5.98 times the theoretical figure" was erroneous.

Since statements have been made throughout the literature which you have sent out that you would be able to furnish electric current for lighting, for electric motor service, and even for heating houses more cheaply than can be done by the methods now in use, and since it is our understanding that most of the stock which you have sold has been purchased by persons without technical knowledge, and upon your false representations, we will go into the matter somewhat more in detail.

To show how utterly hopeless it is for a primary cell depending on zinc as one of its electrodes to compete with the present methods of the generation of electric power, it is only necessary to consider a small amount of elementary cost data.

Assuming that all cost of manufacture, installation, and maintenance were to be borne by the manufacturing company, the customer being required to pay only for the zinc and its renewal from time to time at 10 cents per pound, and assuming, moreover, a theoretically perfect efficiency in the production of electric energy from the chemical action in a cell giving, as did these cells during the test, 0.8 Volt, 3.4 pounds of zinc would be consumed per Kilowatt-hour, and the cost of electric energy to the customer would be 34 cents per kilowatt-hour. The prevailing cost of electric energy to the small consumer is at present 10 cents per kilowatt hour, and

25 the cost of generating electric energy in steam plants is as low as 0.5 cents to 1.0 cent per kilowatt-hour, according to the size of the plant.

But it seems reasonable to assume that the actual cost to the consumer would be at least eight to 10 times as great as the cost of zinc in bulk, when the cost of other materials and of the labor necessary in the process of manufacture, the cost of transportation, of maintenance, and the overcharges and profits of the manufacture are all taken into account. If so, the cost per kilowatt-hour would be 33 instead of 34 cents.

Assuming an efficiency of 40 per cent in a furnace used for heating a house, and assuming 33 per kilowatt hour for the cost of electric power from such a battery, the situation may be summed up by saying that to heat a house by such a battery would be equivalent to paying 33 per kilowatt-hour for current instead of 10 cents,

which is the prevailing rate to the small consumers of an electric light company.

The statement that a cell will fully recuperate on standing may be true so far as voltage is concerned, but to imply that the chemical change is again available, is to claim what amounts essentially to perpetual motion. It would be like claiming a method of changing ashes back into coal by allowing them to stand in a patented apparatus, and it is equally impossible.

The test shows that the battery cannot compete with storage batteries charged from dynamos, either as to output per unit of weight or as to cost of current. The power output during the test was but

0.7 watt or 0.0007 of a kilowatt, and even if it be increased
26 to 8 watts per cell it would require 500 of these large heavy cells (weighing over 2.5 tons) for an output of a kilowatt, which would be necessary to operate a motor of about one horsepower. Such an unwieldy outfit would be commercially impossible in competition with the dynamo. That is, your cell, in common with all other primary cells, obeys the laws of physics and chemistry, and it cannot possibly enter the general field of commercial electric power, lighting and heating.

Since your appeal to the public for stock subscriptions has been based almost entirely upon the claim that your cell could enter and dominate the field of commercial power, lighting and heating and that enormous profits could be made by the supposed reorganization of the whole electrical industry which would result, it seems very clear that your general policy should be immediately changed. The old literature should be immediately withdrawn. A statement to the effect that the claims made for the battery cannot be fulfilled by it should be sent to each person who has invested, and an opportunity given to each to withdraw from the project if he so chooses without financial loss to himself.

If you decide to reorganize on such a basis, we should be glad to examine the statements which you propose to send to the stockholders, with a view of calling attention to any statement that might appear to us unwarranted or misleading.

We shall await with great interest your decision in the matter.

Respectfully.

(Signed)

S. W. STRATTON, *Director.*

Copy.

27

Rule to Show Cause.

Filed October 23, 1915.

* * * * *

It is by the Court this 23d day of October A. D. 1915 ordered that the defendants, Charles S. Engle, individually and as general manager and sole executive committee of American Elementary Electric Company, a body corporate of the District of Columbia and American Elementary Electric Company, a body corporate of the State of Arizona, show cause, on or before the 29th day of October

A. D. 1915 at 10 o'clock A. M., if any they have, why a receiver should not be appointed for the American Elementary Electric Company of the District of Columbia to take charge of, collect, manage, operate, conduct, carry on and administer the business, affairs, property, assets and credits, real and personal and mixed of any and every kind, character and description sold conveyed or attempted to be sold or conveyed by the said American Elementary Electric Company of the District of Columbia to the American Elementary Electric Company of the State of Arizona pending the final disposition of the Bill of Complaint in this cause filed or until the further order of the Court and under its supervision and direction.

Provided that a copy of this order be served upon all of the said defendants on or before the 26th day of October A. D. 1915.

THOS. H. ANDERSON, *Justice*.

28

Answer of Defendants.

Filed December 3, 1915.

* . * * * *

The said defendants and each of them, saving and reserving all and all manner of benefit of exception that can or may be taken to the errors, uncertainties and imperfections in the said bill contained, for answer thereunto, or unto so much and such parts thereof as they are advised it is material and necessary for them to answer, jointly and severally answering say:

1. They admit that the plaintiffs severally claim and, except as hereinafter appearing, are, stockholders of one or the other of the defendant companies, and as such bring this suit, but they deny that any one of the said plaintiffs is a security owner of the defendant District Company, as in the first paragraph of the said bill alleged.

2. Subject to the qualification hereinafter appearing, they admit the allegations of the second paragraph of the said bill to be true.

3. Subject to the qualification hereinafter appearing, they admit the allegations of the third paragraph of the said bill to be true.

4. They admit the allegations of the fourth paragraph of the said bill to be true.

5. They deny that the plaintiffs are owners of any portion of the securities of the defendant District Company, as in the fifth paragraph of the said bill alleged, and, as respects the allegation of the said paragraph, that the plaintiffs are owners of a large por-

29 tion of the capital stock of the said Company, they aver that the following named plaintiffs are the holders respectively of shares of stock of the said Company, according to its records, as follows: Normandy, eleven (11) shares; Hallam, one (1) share; Keiser, one (1) share; Bowman, one (1) share; Gardner, one (1) share; Sampson, one (1) share; Price, one (1) share; Heironimus,

one (1) share; Ryan, one (1) share; Van Buskirk, one (1) share; Vincent A. Smith, one (1) share; Gammell, five (5) shares; Charles A. Smith, three (3) shares; Marguerite A. Smith, one (1) share; Rochester, one (1) share; Mary B. Nicol, three (3) shares; Cary Nicol, one (1) share; Wiehle, one-half ($\frac{1}{2}$) share; Fleishell, one (1) share; Buell, one (1) share; Baissot, one (1) share; Chandler, one (1) share; Clark, two (2) shares; Crowell, one (1) share; Chapin, one (1) share; Drabelle, one (1) share; Dunmire, one (1) share; Drake, one (1) share; Gumm, one (1) share; Hannon, one (1) share; Christian A. Heinekin, Jr., and C. P. Heinekin, one (1) share; Hofman two (2) shares; Holeton, one (1) share; Hudson, two (2) shares; Isherwood, one (1) share; Koch, two (2) shares; Marshall, one (1) share; Naselius, one (1) share; Vail, one (1) share; Tamm, two (2) shares; Williamson, one (1) share; Mooney, three (3) shares; Gans, three (3) shares; Kilbert, one (1) share; A. E. Smith, one (1) share; and Charles J. Murphy, one (1) share; and that the following named plaintiffs are the holders respectively of shares of stock of the defendant Arizona Company, according to its records, as follows; Garner, one (1) share; Williams, one (1) share; D. F. and Elizabeth F. Saum, two (2) shares; Rip-

30 ley, one (1) share; and Hartford, three (3) shares; and that the plaintiff, John A. Nicol, is the holder of no shares of stock of either of the defendant companies; the whole number of shares of stock of both of the said companies together so held by all of the plaintiffs amounting in the aggregate to eighty and one-half ($80\frac{1}{2}$) shares, and no more.

Except as in any part of this answer otherwise appears, they deny the remaining allegations, and each of them, of the said fifth paragraph of said bill.

6. Except as in any part of this answer otherwise appears, they deny the allegations, and each of them, of the sixth paragraph of the said bill.

7. Except as in any part of this answer otherwise appears, they deny the allegations, and each of them, of the seventh paragraph of the said bill.

8. They deny that there ever was any certificate of incorporation of the defendant District Company, by the name of American Elementary Electric Company of the District of Columbia, as in the eighth paragraph of the said bill inferentially alleged, but they admit that in the certificate of incorporation of the American Dynelectron Company hereinafter mentioned, the objects for which the same was organized are stated to be as follows:

"for the purpose of conducting a general manufacturing business in all details, anywhere in the world. Manufacturing, buying, selling and dealing in all kinds of goods, wares and merchandise, including dynelectrons, all kinds of power heating and illuminating plants. Issue and dispose of notes, bonds and other evidences of indebtedness, contracts, franchises, patents, patent rights, trade marks, privileges etc., and in connection with the above to engage in any line of business necessary or convenient for the best interest

of the Company, not inconsistent with the law. Acquiring and disposing of the necessary real estate, and to have all other rights, powers and privileges conferred by the laws upon corporations." 31

They deny that the defendant Engle at any time, in any manner, or by any means, undertook to carry out some, or any, of the objects aforesaid in an ineffective, reckless, or fraudulent manner, as in the said paragraph alleged; and they deny that the said Engle, as in the said paragraph alleged, entirely abandoned and attempted to put out of existence the defendant District Company, or that the vested rights of the plaintiffs have been abandoned and left in a state of absolute neglect, as in the said paragraph alleged; but they admit that, for the reason hereinafter appearing, there has been no stockholders' or directors' meetings of the said defendant District Company since, to-wit, the month of October, 1914.

9. They admit the conveyance, transfer, assignment and delivery of all of the assets of the defendant District Company to the defendant Arizona Company, as in the ninth paragraph of the said bill alleged, but they deny that such was in any manner, or in any sense, fraudulent or without valuable consideration, as in the said paragraph alleged, and they admit that the defendant Arizona Company is possessed of but little, if any, property or assets other than such as were formerly of the defendant District Company; but they deny that if the defendant Arizona Company is permitted to continue in possession of the said property and assets the vested rights of the plaintiffs will be entirely or at all dissipated, or that the value of their interests, whatever they may be, in the defendant District Company, will be wholly, or at all, destroyed.

10. They admit that, as alleged in the tenth paragraph 32 of the said bill, certain of the plaintiffs have been denied admission to a stockholders' meeting of the defendant Arizona Company, and they aver that such plaintiffs were so denied such admission for the sole reason that they, such plaintiffs, have refused to acknowledge the validity and sufficiency in law of the proceedings hereinafter set forth, and have refused to become, and are not, holders of stock of the said defendant Arizona Company.

They deny that the plaintiffs have been unable to procure any showing or information as to the terms, conditions, nature and extent of the transfer and assignment made by the defendant District Company to the defendant Arizona Company, as in the said paragraph alleged, and, on the contrary, they aver, of their own knowledge, as to certain of the plaintiffs, and on information and belief as to the others, that they have, and for a long time prior to the filing of the said bill had, full knowledge in the premises.

They admit that the plaintiffs have never realized or been paid anything on account of the securities, so-called, of the defendant District Company, from the proceeds of the sale of its assets to the defendant Arizona Company, but they aver that the said plaintiffs have never had, and have not, any right so to realize or be paid anything from the said proceeds; and they admit that the plaintiffs have thus far not been offered by the defendant Arizona

Company any state option contracts, so-called, of the said defendant, or anything else of value, for their securities, so-called, of the said defendant District Company.

They deny that the transfer and sale of all the assets of the said defendant District Company is a fraud upon the rights of
33 the plaintiffs as owners of the securities, so-called, or stock of the defendant District Company, but they admit that the said transfer and sale were made without the consent or privity, and against the individual wishes, of certain of the plaintiffs, but only as hereinafter appears.

And they deny that the said transfer was without valuable consideration either to the defendant District Company or to the plaintiffs, as in said paragraph alleged.

11. They admit that, as alleged in the eleventh paragraph of the said bill, defendant Engle has received a sum of money, not, however, to the aggregate in the said paragraph stated, but they deny that he has squandered, misappropriated, dissipated, wasted and secreted substantially all, or any, of said amount, or that, if any portion still remains unexpended, the same will be misappropriated or secreted by him to the damage of the alleged rights of the plaintiffs, or at all.

12. They admit that, as alleged in the twelfth paragraph of the said bill, since, to-wit, the month of October, 1914, the plaintiffs holding stock in the defendant District Company have been given no notice of any meetings of the stockholders or directors of the defendant Arizona Company, but they aver the fact to be that the plaintiffs were so given no such notice solely because they are not, and have declined to become, holders of stock of the defendant Arizona Company, and they admit, as heretofore stated, that such of the plaintiffs as applied for admission to any such meeting of the defendant Arizona Company have been refused admission thereto,

but solely for the reason hereinbefore stated; and they deny
34 that the plaintiffs have been refused information, as in the said paragraph alleged, and, on the contrary, of their own knowledge as to certain of the plaintiffs, and on their information and belief as to the others, they aver that the plaintiffs are fully and adequately informed respecting the matters and things concerning which they profess to have been refused information as aforesaid.

13. They are advised that it is unnecessary for them to answer the allegations of the 13th paragraph of the said bill, further or otherwise than as hereinafter appears.

14. They admit that, as alleged, or apparently purporting to be alleged, in the fourteenth paragraph of the said bill, the defendant Engle took, of the capital stock of the defendant Arizona Company, substantially the same amount as he formerly had of the defendant District Company, and they admit that, as the holder of a large majority of the stock of the defendant Arizona Company, the said defendant Engle, as he lawfully may, possesses and asserts a controlling interest in the said Company; but that he so does in the

manner or means as set out in the fifth paragraph of the said bill, they deny.

15. They admit that, as alleged in the fifteenth paragraph of the said bill, certain civil suits have been filed in this court against the defendant District Company and the defendant Engle, and that the same are now awaiting trial, but they deny that the said suits, or any of them, will not be diligently and carefully defended by the defendants in the interest of the plaintiffs, but, on the contrary, will be defended in a manner detrimental to and destructive of the rights of the plaintiffs; and they aver that the allegations
35 of the said paragraph in this behalf are not only without the slightest foundation in either fact or surmise, but also are willfully scandalous and malicious.

The certain suits aforesaid, and their present status are as follows:

In Equity No. 32589, Smith, et al., vs. American Elementary Electric Co., et al., for injunction, accounting and receiver, filed April 11, 1914, and dismissed by the court May 15, 1914, with damages and costs and a reference to the Auditor to ascertain the damages sustained by the defendants by reason of the wrongful suing out of the injunction therein, which said reference is still pending undetermined.

At Law No. 57506, filed December 15, 1914, Chauncey E. Richardson vs. American Elementary Electric Company, et al. for Two thousand, seven hundred and twenty Dollars (\$2,720), for services claimed to have been rendered by the said Richardson, who, however, did not file with his declaration any affidavit in support thereof, and the said cause in which issue was duly joined, is now on the calendar for trial. Subsequently to the filing of this suit, the defendant Engle, one of the defendants therein, filed his suit At Law No. 57544, on December 23, 1914, against the said Richardson, for the sum of Three hundred and ninety Dollars (\$390), supporting his declaration by his, the said Engle's affidavit, for failure to meet which and to plead to the said suit, judgment by default for the said sum, with interest, was rendered against the said Richardson, January 22, 1915.

36 At Law No. 58471, Robert H. McNeill vs. American Elementary Electric Company and George S. Engle, originally begun in the Municipal Court of the District of Columbia, for an alleged debt for professional services, the plea to which was duly supported by affidavit, and the said cause is now on the calendar for trial.

At Law No. 58311, J. A. and M. B. Nicol vs. George S. Engle and the American Elementary Electric Co., filed August 26, 1915, for Fifty-nine thousand, nine hundred and fifty dollars (\$59,950), for damages, for alleged fraud and misrepresentation respecting the purchase by the plaintiffs of stock of the said Company, which said cause also is on the calendar for hearing.

In addition to the foregoing, there also are, on the records of this court, the following suits:

At Law No. 58118, George S. Engle vs. John A. Nicol, for Twenty-

five thousand Dollars (\$25,000) damages, for libel, filed June 4, 1915, and now on the calendar for trial.

At Law No. 58119, George S. Engle vs. M. B. Nicol, for Fifty thousand Dollars (\$50,000) damages, for libel, filed June 4, 1915, and now on the calendar for trial.

16. They are advised that it is unnecessary for them to answer the allegations of the sixteenth paragraph of the said bill.

17. They are advised that it is unnecessary for them to answer the averments of the seventeenth paragraph of the said bill.

And, further answering, the defendants say:

18. The defendant George S. Engle is the inventor of a certain electrical battery, commonly known as and called the "Engle
37 primary battery," the same being of great value and promise.

In order to exploit and place upon the market his said invention, the said defendant Engle decided to adopt the usual instrumentality of a body corporate for that purpose, and, finding already in existence, in supposed compliance with the laws of the District of Columbia, a corporation by name the American Dynelectron Company, incorporated November 30, 1904, acquired control of the same and afterwards, by order or decree of this court of September 11, 1908, upon petition in that behalf in cause No. 27992 in Equity, procured the name of the said Company to be changed from American Dynelectron Company to American Elementary Electric Company, and such always has been, and is, the defendant District Company, party hereto.

The amount of capital stock of the said Company was fixed by its certificate of incorporation, by the name of American Dynelectron Company, at Twenty-five million Dollars (\$25,000,000), divided into two hundred fifty thousand (250,000) shares, of the par value of One hundred Dollars (\$100) each, and, in accordance with a common practice in that behalf, the said defendant Engle assigned, transferred and made over to the said Company his said invention, in consideration of the issue to him of its entire capital stock, of which he placed in the treasury of the Company fifty thousand (50,000) shares, of the par value of Five million Dollars (\$5,000,000), retaining as his own the remaining two hundred thousand (200,000) shares, of the par value of Twenty million Dollars (\$20,000,000), and being duly elected and constituted President, General Manager and Executive Officer of the said Company.

38 Thereupon, believing such to be in all respects lawful and proper under the laws of the District of Columbia, and not being otherwise advised, the defendant District Company and the defendant Engle, as President, General Manager and Executive Officer thereof as aforesaid, conceived and undertook to put into execution a general plan of organizing throughout the several states of the United States local corporations to be subsidiary to the defendant District Company as a parent company, and, in that behalf, caused to be prepared certain state option contracts, so-called, in accordance with which, among other things, the promoters of the organization of the said local corporations or state organizations, so-called, upon the purchase at par of certain shares of stock of the

defendant District Company, of the holdings of the defendant Engle, and the actual organization of the said several local or state corporations, and the purchase at par of certain shares of stock thereof, should receive, by way of bonus in remuneration of their early participation, investment and promotion services in the premises, certain additional shares of stock of the said local or state corporations or organizations, it being the intent and purpose to keep the shares of stock of the defendant District Company in its treasury intact until the enterprise should have been placed upon a practical and commercial basis and standing, the defendant Engle undertaking to meet and pay, in the meanwhile, out of the sums of money received and being received by him for his individual stock, all necessary expenses of the enterprise; and part of the said plan involved and required the delivery to the defendant District Company, as
39 parent company as aforesaid, of a certain proportion of the stock of each of the said local or state corporations or organizations, with the right to the defendant District Company to be represented temporarily in the management of each of the said local or state corporations or organizations and in the directory thereof. The said state option contracts, so-called, are the securities, so-called, mentioned by the plaintiffs in their bill of complaint herein.

Pending the effort to exploit the said invention in the manner aforesaid, certain other persons than the said defendant Engle, and formerly in his employ in developing the said battery, claimed themselves to be the original inventors thereof, and litigation between the said defendant and such other persons followed, and the enterprise of exploiting the said invention became and was seriously hampered and interfered with and the progress of promoting and forming the said local or state corporations or organizations arrested. Concurrently, the impatience of certain persons who had been led to purchase shares of stock of the defendant District Company and to become interested in the said state option contracts, so-called, and the attempt of some to obtain a control and direction thereof out of proportion to their interests in the Company, and in disloyalty to its management, further interfered with and hampered the progress of the enterprise. Among those conspicuous and most active in this behalf were the plaintiffs John A. and Mary B. Nicol, the former of whom, as above stated, holds no share of stock of either of the defendant companies, and the latter of whom of record holds three
40 shares only of the stock of the defendant District Company, although the defendants are informed and believe, and accordingly aver, she has purchased, or undertaken to purchase, from sundry of the plaintiffs the shares of stock of the said Company appearing of record in their names, to the number of fourteen (14) in all; and it was because of the false, scandalous and malicious statements published in, to wit, the month of June, 1914, by the said John A. and Mary B. Nicol concerning him that the defendant Engle instituted, and has now pending, the suits at Law aforesaid against the said John A. and Mary B. Nicol for libel. Also, among those so conspicuous and active were the plaintiff Normandy, a former employee of the defendant District Company in the capacity

of demonstrator and mechanical assistant, who at a meeting of the plaintiffs, or a majority of them, in preparation for the institution of this suit, openly boasted that he had in his possession the only full and complete set of papers, records and data relative to the said battery, its development, tests, worth, etc., and that he would not give up the same to the defendant Engle; the plaintiff Charles A. Smith, formerly in the employ of the defendant District Company as a bookkeeper, and who was the initial plaintiff in the certain cause in Equity No. 32589, in this court, hereinabove mentioned; and the plaintiffs Gammell and Rochester, friends of the plaintiff Normandy, and also co-plaintiffs with the said plaintiff Smith in the cause last aforesaid.

In the condition of the affairs of the said defendant District Company thus indicated, and which developed within, to wit, six months from the first practical endeavor to establish the said local or state corporations or organizations and to install and equip a laboratory and workshop for the development and production of specific types of the said battery, the defendants District Company and Engle consulted new and additional counsel, by whom, upon examination and consideration of the status of the defendant District Company, they were advised, among other things, as follows: First, that, because of the number and diverse and unrelated natures of the objects for which the defendant District Company, by its original name, American Dynelectron Company, purported to have been organized and incorporated, its act of incorporation was of doubtful validity, if indeed it were not—according to the decisions of the Court of Appeals of the District of Columbia in the case of Dancy vs. Clark, 24 App. D. C. 487, and other cases,—absolutely void, or at least certainly voidable upon the institution of due proceedings in that behalf; Secondly, that the change of name of the said Company as aforesaid, notwithstanding that it was in accordance with the practice in previous instances, was likewise of doubtful validity; and Thirdly, and especially, that, under the laws relating to corporations of the District of Columbia, it would be unlawful and impossible to carry out the plan so as aforesaid conceived and undertaken to be put in operation for the organization of subsidiary companies as aforesaid, for that by the said laws it was not provided or contemplated that a corporation of the District of Columbia could hold stock in another corporation or become or be such a holding or parent company, so-called, as the said plan contemplated and provided as its central and chief feature; wherefore the said defendants District Company and Engle were advised by their said counsel that

41 it would be prudent, if indeed not indispensably necessary, if

42 the operations of the said Company were to be continued in and carried out in manner aforesaid, that there should be organized under the laws of some other jurisdiction than the District of Columbia a new and independent corporation about whose powers and privileges in the premises there could be no doubt, and into which, as its successor in law and in fact, the defendant District Company could, in effect, be transmuted.

Acting upon such advice of counsel in the premises, the Board of

Directors of the defendant District Company, at a meeting called and held for that purpose, duly adopted and caused to be issued to all of the stockholders of the defendant District Company notice of a meeting of the said stockholders, at the office of the Company, in the City of Washington, District of Columbia, on October 6, 1914, which meeting was duly held, and there were present thereat, in person, the holders of one hundred ninety-nine thousand, one hundred forty-six (199,146) shares of the capital stock of the defendant District Company, and, by proxy, one hundred ninety-six (196) shares, leaving unrepresented but six hundred fifty-eight (658) shares of the entire two hundred thousand (200,000) shares of the said Company outstanding, and, at the said meeting, by a vote of the holders of one hundred ninety-nine thousand, three hundred thirty-seven (199,337) shares of the said Company, the holder of one share voting in the negative and the holder of four shares not voting, there were adopted the preambles and resolutions set forth in the letter of October 17, 1914, of the Secretary of the defendant District Company, which was by its said Secretary sent to each of its stockholders, and a copy whereof, marked "Defendants' Exhibit A," is filed

43 herewith and prayed to be taken as part hereof.

Subsequently to such, the action of the stockholders of the defendant District Company, and the sending to them of the said letter, the holders of stock of the said Company to the aggregate amount of one hundred ninety-nine thousand, seven hundred thirty-nine and one-half ($199,739\frac{1}{2}$) shares, respectively surrendered for cancellation, and there were cancelled, their said shares of stock, in exchange for that of the defendant Arizona Company in equivalent amounts and to the aggregate aforesaid, so that at the first regular meeting of the stockholders of the defendant Arizona Company, on October 5, 1915, there remained outstanding and unexchanged of the stock of the defendant District Company only two hundred sixty and one-half ($260\frac{1}{2}$) of an outstanding issue of two hundred thousand (200,000) shares, and, in accordance with such, the action of the stockholders of the defendant District Company, and in consideration of the undertaking by the said Arizona Company to become successor of the said District Company and to exploit and carry out the enterprise and objects for which the said District Company purported to have been incorporated and organized as aforesaid, there have been duly transferred, conveyed and made over by the defendant District Company, to the defendant Arizona Company, and by it accepted and received, all of the property, assets and rights, of what kind and character soever, formerly of the defendant District Company, subject to the obligations and liabilities thereof, and the defendant Arizona Company, accordingly, has become, and now is, in fact and in law, the successor of the defendant District Company; and the said defendant Arizona

44 Company since has been, and now is, and will continue to be, engaged in the earnest and zealous endeavor to exploit and carry out the enterprise and its objects aforesaid, for the purpose of which, in the circumstances aforesaid, it was incorporated and or-

ganized, namely, to produce, manufacture, and place upon the market, the battery aforesaid, in its several types and styles.

19. In accordance with its articles of incorporation and by-laws, and pursuant to notice in that behalf, the first annual meeting of the stockholders of the defendant Arizona Company was held at the office of the Company, in the City of Washington, District of Columbia, on October 5, 1915, at twelve o'clock noon, and thereat there were had the certain proceedings fully and accurately set forth in the report of the Secretary of the said meeting, a copy whereof marked "Defendants' Exhibit B," is filed herewith and prayed to be taken as part hereof.

20. All and every, the shares of stock of either the defendant District Company or the defendant Arizona Company held or claimed, or purported to be held, by the plaintiffs severally are shares of such stock transferred out of the holdings of the defendant Engle aforesaid, namely, the two hundred thousand (200,000) shares of stock originally retained by him in the defendant District Company (formerly known as American Dynelectron Company) aforesaid, and the stock of the defendant Arizona Company substituted therefor in manner aforesaid, and no share of stock so as aforesaid held, claimed, or purported to be held by any one of the plaintiffs was,

45 or is, part of the said stock so as aforesaid placed and left in the treasury of the defendant District Company and now in the treasury of the defendant Arizona Company.

And, of the said shares of stock so as aforesaid held, claimed, or purporting to be held, by the plaintiffs herein named, nine of the eleven shares in the name of the plaintiff Normandy were issued to him as bonus, as aforesaid, for services in respect of the formation of a subsidiary company as aforesaid, for the District of Columbia; the plaintiff Keiser has, since the institution of this suit, in writing declared that the same was instituted without his knowledge or authority, and that he does not concur therein; the plaintiff Vincent A. Smith received his one share of stock in consideration of Twenty Dollars (\$20) commission allowed him for services and his promissory note for Eighty Dollars (\$80), now overdue and unpaid; the plaintiff Charles A. Smith received one share of his stock in compensation for services as a bookkeeper of the defendant District Company, and the remaining two in consideration of his promissory note for Two hundred Dollars (\$200), now overdue and unpaid; the plaintiff Marguerite A. Smith received her one share of stock in consideration of Twenty Dollars (\$20) commission allowed to the plaintiff Charles A. Smith, and she has paid on account of the said share of stock the sum of thirty-five Dollars (\$35), in addition to the said allowance of Twenty Dollars (\$20), and no more; the plaintiff Rochester received his one share of stock in consideration of Twenty Dollars (\$20) commission allowed to the plaintiff John A. Nicol, and, in addition thereto, has paid on account of the said stock the sum of Twenty-five Dollars (\$25), and no more, notwithstanding that the said Rochester has since the receipt of his

46 said share of stock received from the defendant Engle a large number of commissions on sales of other stock; the

plaintiff Mary B. Nicol, on, to wit, June 19, 1914, in writing addressed to the Secretary of the defendant District Company declared and stated that she had purchased, although the same have not been transferred to her on the books of the Company, the shares of stock of the following named plaintiffs: Baissot, Clark, Chapin, Drabelle, Hofman, Koch, Naselius, and Tamm; the plaintiff A. E. Smith received her one share of stock in consideration of Twenty Dollars (\$20) commission credited to the plaintiff Vincent A. Smith, and has made no payment of any kind on account thereof; and, on June 13, 1914, the plaintiff Drabelle, in writing addressed to the Secretary of the defendant District Company, stated that she had some time prior thereto disposed of her stock to the said Mary B. Nicol, and, since the institution of this suit, the plaintiff Vail has similarly, in writing, declared that she ceased to be a stockholder of the said Company some time ago, and knew nothing about the suit.

21. The certain state options hereinbefore and in the said bill of complaint mentioned were and are in form, substance and effect agreements by and between the defendants District Company and George S. Engle, as of the first part, and certain individuals respectively, as of the second part, giving and granting to the parties of the second part options, so-called, on the organization of subsidiary companies, corporations, or organizations as aforesaid, and, among others, upon the terms aforesaid respecting subscriptions to and payment for stock of the defendant District Company, and of the several subsidiary companies respectively, with the right of
47 bonus as to stock of the latter as aforesaid; and the benefit and advantage of each such state option contract to the party thereto of the second part, was the privilege, to the exclusion of others, of organizing such subsidiary company in each particular instance, which benefit and advantage could and would accrue only upon the organization, through the efforts of the party of the second part, of such subsidiary company, and the procurement by him of subscriptions as aforesaid; wherefore, each of the said state option contracts was only in fact and in law a bipartite agreement, upon the performance by the party of the second part of his undertakings in the premises, and upon such performance only, did he or could he become entitled to any claim upon the parties of the first part, and no such state option contract can or could, with any propriety, be called or considered as a security of the defendant District Company, as in and by the said bill purporting. The plaintiffs John A. and Mary B. Nicol were parties of the second part of sundry, to wit, five of such state option contracts, the same relating respectively to the states of Montana, Delaware, Wyoming, and Virginia, and the territory of Hawaii. Owing to the embarrassment of the defendant District Company growing out of and incident to the situation hereinbefore in the eighteenth paragraph of this answer stated and set forth, the said plaintiffs Nicol, becoming dissatisfied with the outlook of the enterprise in hand, desired themselves to be relieved of further relation thereto, and, as far as possible, to make satisfactory adjustment with all persons who, through the medium of the said

48 state option contracts, they had interested in the said enterprise; and, to that end, the said plaintiffs, upon their own proposal, entered into the certain agreement of February 19, 1914, whereof a copy, marked "Defendants' Exhibit C," is filed herewith and prayed to be taken as part hereof.

As from the said agreement appears, the said plaintiffs, for and in consideration of the sum of Twelve hundred and fifty Dollars (\$1250) and the surrender to them of all unpaid notes given by them on account of the several state option contracts aforesaid, agreed to surrender the same proportionately, according to payments made to them; and, in accordance with the said agreement, the said plaintiffs were at the date thereof paid the sum of Five hundred Dollars (\$500), and thereafter, and on March 25, 1914, paid the further sum of Two hundred fifty Dollars (\$250), but, before the next payment, to wit, of the sum of Two hundred fifty Dollars (\$250) became payable to them, and on April 11, 1914, they joined with the plaintiff Charles A. Smith and others in filing the bill of complaint in the said cause Equity No. 32589 aforesaid, praying for injunction, accounting and receiver, all of the record and proceedings in which said cause it is prayed may be read in any hearing hereof; and, by the filing of the said bill of complaint and the institution of said cause, the said plaintiffs Nicol disregarded, repudiated and abandoned their said agreement of February 19, 1915, and since have continued so to do, and have not asked or demanded any other or further payment on account of the said agreement, or the further performance thereof in any particular.

22. All and singular the allegations and averments of the fifth, sixth and seventh paragraphs of the said bill not otherwise
49 answered than as hereinbefore appears, when not false and scandalous, are impertinent and of matters respecting which the defendants are advised it is not necessary or material for them further to answer: for that, among other reasons, first, it is immaterial how the defendant Engle may have acquired the certain shares of stock the possession of a portion of which by the plaintiffs, derived through the said Engle, alone gives them their right to claim to be stockholders of either of the defendant companies; secondly, the plaintiffs are estopped to question the validity of the issue of the stock by reason of the possession of any part of which they have alone any claim to a standing in court; thirdly, the value of the invention of the defendant Engle aforesaid is immaterial to the matters in controversy, as set forth in and by the said bill, and, furthermore, it does not appear from the said bill, by either direct or inferential allegation, who is the certain "S. W. Stratton of the U. S. Bureau of Standards," therein mentioned, or upon what or in what circumstances the alleged tests purporting to be referred to in and by his alleged report were made, or whether he was, or is, an electrician or chemist, or otherwise of scientific attainments of what kind soever, or that his assumed position of Director of the said Bureau required him to have, or that he in fact has, the necessary qualifications, or any qualifications, to make the said tests, or any adequate tests whatever, of the said battery aforesaid, or of any cells entering into the con-

stitution of the same; fourthly, it is of no bearing upon the rights of the plaintiffs in the premises that the defendant Engle, by reason of the extent of his holdings of the stock aforesaid, has the power to control the management of the defendant companies, or either of them, which power it is his right and privilege to have and assert, by reason of such, the extent of his said holdings, which the plaintiffs at the time of acquiring their stock knew, or, in the exercise of reasonable diligence, should and would have known; fifthly, the defendant Engle having the clear right to sell and dispose of his said stock as to him might seem proper, had the equally clear right to use and apply the proceeds of sale thereof as he might see fit, provided that in so disposing of his said stock or using and applying the proceeds thereof he was, as the fact is, not guilty of any false, fraudulent or misleading act or representation; and sixthly, it is not in and by the said bill claimed or contended, as in fact it could not truthfully be, that the plaintiffs, or any of them, were led or induced to acquire the stock claimed to be possessed by them by or through any such false, fraudulent or misleading act or representation. and, if the plaintiffs or any of them were in fact so led and induced, they would have a full, adequate and complete remedy at law against the defendant Engle in the premises, but no right or remedy of what kind soever against the defendant companies, or either of them.

23. It is true that, as alleged in the thirteenth paragraph of the said bill, on to wit, August 4, 1915, an indictment was returned into this court against the defendant Engle charging him with having obtained from the plaintiffs Nicol certain sums of money by color and means of false pretences and representations, but the facts in relation to the procuring of the said indictment are as follows: on the hearing of the said cause of Smith, et al., vs. American
51 Elementary Electric Company, et al., No. 32589 in Equity, the Justice presiding, on his impression derived from certain false, unfounded and malicious statements made by certain witnesses in the course of the said hearing, to wit, in the month of April, 1914, caused the same to be brought to the attention of the then Attorney of the United States for the District of Columbia, who, in perscon and by his assistants, considered the same, but, at the request of the said defendant, heard also in connection therewith the statements of witnesses in behalf of the said defendant, who had not been witnesses before the said Justice in the said cause in Equity, and the said Attorney of the United States caused no indictment to be returned against the said defendant in the premises; and, as hereinbefore appears, the said Justice on the final hearing thereof, and on, to wit, May 15, 1914, dismissed the bill of complaint in the said cause. Thereafter, and on June 4, 1915, the said defendant Engle instituted against the said plaintiffs Nicol the certain suits At Law No. 58118 and No. 58119 aforesaid for libel, for the utterance and publication by the said plaintiffs of the same or substantially the same statements as those on which they had so sought to have the said defendant indicted as aforesaid, and thereupon the said plaintiffs, with the aid of counsel, so formulated and prepared their said state-

ments and so presented the same to the now Attorney of the United States for the said District, as that in the absence of any hearing of the said defendant, or any one in his behalf, on the ex parte statements so formulated, prepared and presented, the said indictment against the said defendant was returned; but, because of the insufficiency thereof, in respect of the alleged false and fraudulent
52 representations therein and thereby purporting to be charged against him, the said defendant has, through his counsel, formally interposed his demurrer to the said indictment and the same is now awaiting hearing on the said demurrer. And the defendants aver and charge that the allegations in the said bill of the plaintiffs of the fact of the said indictment is scandalous and impertinent, and made solely for the purpose of the supposed discredit and disadvantage to be caused the defendants in this cause, and especially on a preliminary hearing thereof, respecting an application for the appointment of a receiver of the defendant company or companies.

24. It is not alleged, nor does it appear in and by the said bill, even inferentially, that the plaintiffs, who are an infinitesimal minority of the stockholders of the defendant companies, or either of them, (holding in the aggregate but a minute fraction over one-twenty-five-hundredth of the number of shares of the said stock outstanding), prior to filing their said bill of complaint, made any application to or effort with the Directors or officers, or any one of them, of the said companies, or either of them, to have rectified by the said Directors or officers their alleged grievances in the premises, or to have the said Directors or officers institute any proceeding or to take any action in any court respecting the matters and things, or any of them, complained of by them, the plaintiffs, or call or request any meeting of the stockholders of the said companies, or either of them, to take action in respect thereof; and the plaintiffs have not, in and by their said bill, made or stated any such case
as does or ought to entitle them to the relief thereby prayed,
53 or to any relief in the premises; and the defendants claim the same benefit and advantage of these objections to the said bill as though they had formally demurred thereto on account thereof.

And now, having fully answered, the defendants pray hence to be dismissed with their costs.

AMERICAN ELEMENTARY ELECTRIC
COMPANY (OF THE DISTRICT OF
COLUMBIA),

By GEORGE S. ENGLE, *Its President.*

AMERICAN ELEMENTARY ELECTRIC
COMPANY (OF ARIZONA),

By GEORGE S. ENGLE, *Its President.*

GEORGE S. ENGLE.

HENRY E. DAVIS,

A. L. NEWMYER,

Attorneys for Defendants.

DISTRICT OF COLUMBIA, ss:

Before me, a Notary Public in and for the District aforesaid, personally appeared George S. Engle, who, being by me first duly sworn, deposes and says, that he is the George S. Engle named in the bill of complaint herein, and is the President, General Manager and Executive Officer of each of the above named companies, defendants to the said bill, and that he has heard read the foregoing answer by him subscribed as President of each of the said companies and individually, and knows the contents thereof; and that the matters and things in the said answer stated of his own knowledge
54 are true, and those stated on information and belief he believes to be true.

GEORGE S. ENGLE.

Subscribed and sworn to before me this 10th day of November, A. D. 1915.

[SEAL]

CLARA M. REICHENBACH,
Notary Public, D. C.

EXHIBIT A.

George S. Engle, President and General Manager American Elementary Electric Company, The Engle Oxy-Electron Battery.

Laboratory and Factory, 108 Second Street Southwest.

Business Office, Suite 11 and 12, National Hotel.

WASHINGTON, D. C., October 17, 1914.

To the stockholders of the American Elementary Electric Company, incorporated and organized under the laws of the District of Columbia:

You were heretofore notified of a meeting of the stockholders of the Company, to be held at the office of the Company, in the City of Washington, District of Columbia, on October 6th, 1914, at 12 o'clock noon, which meeting was called in conformity with a resolution of the Board of Directors of September 1, 1914. The meeting so called was duly held, and there was taken thereat the action hereinafter indicated.

55 The reason and necessity for the meeting appear from the resolution of the Directors at their meeting aforesaid of September 1, 1914, and the notice heretofore sent you; the same being, in brief, that, in view of the prospective expansion of the business of the Company and of the field of its operations, the prudence of greater specification of its objects, powers and privileges, and the enlargement thereof by charter right, appropriate action should be had to define and secure the charter or corporate rights and powers of the Company under appropriate articles of incorporation, and under laws, not so limiting and restricting the said charter or corporate rights and powers as they are limited and

restricted under and by force of the laws of the District of Columbia and articles of incorporation adopted thereunder.

At the meeting so called and held on October 6, 1914, there were represented by the holders in person thereof a very large majority of the outstanding shares of stock, but comparatively few of such shares not being represented; and the attorney of the Company, upon whose advice the meeting was called for the purpose indicated, was present and stated and explained in full, not only the object of the meeting but also the prudential reasons and, indeed, necessity of taking the proposed action; and, after such statement and explanation, and discussion by the meeting of the subject, there were duly adopted the following preambles and resolutions:

It appearing to the stockholders that the charter or corporate rights and powers of the company under its existing Articles of Incorporation, under and subject to the laws of the District of Columbia, are unduly limited and restricted for the operations of the Company as heretofore entered upon, intended and contemplated, and that it is to the interest of the Company and its stockholders that the said operations be carried on under Articles of Incorporation, and under laws not so limiting and restricting the said rights and powers aforesaid;

And it further appearing to the stockholders that, pursuant to a resolution of the Board of Directors in that behalf, duly adopted at a meeting held on the first day of September, 1914, there has been duly formed under the laws of the State of Arizona an Incorporation by the name of American Elementary Electric Company (hereinafter called Arizona Company), with rights, powers and privileges sufficiently broad and comprehensive for the operations aforesaid and the effective carrying out of the purposes and objects of the company, and with capital stock in a like amount and character therewith;

It is, by the stockholders of the American Elementary Electric Company, as incorporated, existing and operating under the laws of the District of Columbia as aforesaid (hereinafter called District of Columbia Company), resolved as follows, namely:

First. That the said District of Columbia Company shall sell, transfer, convey, and in whatever other due form make over, all of its property, assets and rights of what kind or character soever, including all of its patent rights in the United States, under Letters Patent thereof, to the said Arizona Company;

Secondly. That the shares of stock of each stockholder of and in the said District of Columbia Company shall be by such stockholder surrendered for cancellation, and cancelled, upon the issue and exchange, and the receipt by such stockholder, in lieu thereof, of an equivalent number of shares of stock in and of the said Arizona Company;

Thirdly. That upon the surrender, cancellation, issue, exchange and receipt of the said respective shares of stock as aforesaid, the charter or corporate rights and powers of the said District of Columbia Company shall be deemed to be surrendered and abandoned by the stockholders thereof, and that the opera-

tions, present and prospective, of the said company shall be carried on by the said Arizona Company, as the successor in fact and in law of the said District of Columbia Company; and,

Fourthly. That the Board of Directors, and President and Secretary, respectively, of the said District of Columbia be, and they hereby are, empowered, authorized and directed to do and perform, and to cause to be done and performed, all and every such acts and things as shall or may in law be proper, requisite and necessary to carry into effect and consummate these resolutions and the purposes thereof, including the making, executing, acknowledging and recording to any and all conveyances, transfers and assignment of the property, assets and rights, including the patent rights aforesaid, now of the said District of Columbia Company.

The effect of carrying out the foregoing resolutions will be to constitute the Arizona Company the successor in fact and in law of the existing District of Columbia Company—in other words, to transmute the latter into the former—under conditions of far greater powers and opportunities than heretofore, and permitting the continuance of the operations, present and prospective, of the enterprise in hand as though no change in the control and exploitation thereof had even in appearance been made; and as appears, a prime feature of the plan resolved upon and adopted is the contemplated exchange of stock of the District of Columbia Company for that of the Arizona Company.

You are therefore requested, at your early convenience, to transmit to the Secretary for surrender and cancellation your certificate of stock in the District of Columbia Company, to receive in return therefor the equivalent in certificates of the Arizona Company, which latter will be promptly sent you.

58 Stockholders so preferring may deposit their present certificates with depositaries of their own choosing, with instructions to forward them to the Secretary upon the receipt of certificates for equivalent stock as aforesaid, but in every such case the depositary selected should communicate directly with the Secretary and effect the desired exchange.

Respectfully,

A. M. BUXTON, *Sec'y.*

N. B.

Return for transfer, only, the regular certificate of the American Elementary Electric Company, properly assigned.

EXHIBIT B.

Proceedings of the annual meeting of the stockholders of the American Elementary Electric Company (Arizona), held at the office of the Company, in Room 12 of the National Hotel, Washington, D. C., on Tuesday, October 5th, 1915, at 12 o'clock, noon, pursuant to notice and the by-laws of the Company.

The meeting was called to order by Mr. Henry E. Davis, who stated its object.

Upon motion duly made, seconded and carried, Mr. W. E. Berry was elected temporary chairman, and Mr. Alvin L. Newmyer temporary secretary of the meeting.

Upon motion duly made, seconded and carried, a poll of the stockholders was had and there was found to be present in person, representation of 197,811 shares of the capital stock of the Company, and by proxy, 1407 shares.

It appearing that the shares represented constituted 99.5% of the whole number outstanding, to-wit, 199,218 out of 200,000
59 shares, the chairman thereupon declared the meeting competent to proceed with the transaction of business.

Upon motion duly made and seconded, it was resolved that the proxies be accepted and voted as recorded.

The secretary thereupon read the notice calling this meeting, and upon motion duly made, seconded and carried, the temporary officers were unanimously elected as permanent officers of this meeting.

The next in order being the annual report of officers and committees, the report of the Board of Directors was read, and upon motion duly made, seconded and carried, the same was accepted and ordered spread upon the minutes of this meeting.

This report is as follows:

To the Stockholders of the (Arizona) American Elementary Electric Company:

In view of certain statements made and certain actions taken by sundry persons in hostility to the present management of the Company and the enterprise for which it was organized, namely, the exploitation of the Engle primary battery, so-called, the invention of George S. Engle, the Company's President, and in order that all interested may know the animus of such statements and actions and the exact condition of the Company and its enterprise, the following is submitted by the Board of Directors for your information and consideration:

The Engle primary battery was invented several years ago by General Engle, and sundry United States patents have been applied for and same allowed in relation thereto.

60 Desiring a means of exploiting and placing the invention upon the market, General Engle adopted the usual instrumentality of a body corporate, and, finding already in existence a company

incorporated under the laws of the District of Columbia, by name The Dynelectron Company, acquired the same, and, thereafter desiring to give the Company a name more appropriate to his invention, by the advice of his then counsel, procured the name of the Company to be changed to the American Elementary Electric Company, the capital stock of the corporation being fixed at Twenty-five million Dollars (\$25,000,000.), represented by Two hundred and fifty thousand (250,000) shares of the par value of One hundred dollars (\$100) each.

Following a familiar practice in such cases, in exchange for his invention and patents, present and prospective, to be duly assigned to the Company whenever and as soon as procured by him, the Company thus reconstituted issued to General Engle its entire capital stock consisting of Two hundred & fifty thousand (250,000) shares, upon the understanding, which was duly carried out, that General Engle should place in the treasury of the Company Fifty thousand (50,000) shares of the stock, to be retained by the Company as treasury stock, and retain the remaining Two hundred thousand (200,000) shares, undertaking to sell the same as rapidly and as profitably as might be, and, out of the proceeds of the sale thereof, furnish the necessary moneys for continuing work upon the battery and bringing it to a condition of commercial availability.

In order to put upon the market the stock thus contemplated to be sold, a plan was conceived, the central idea of which was to treat the Company as a parent company and to organize in the several states of the United States state companies having prescribed rights and privileges, but in every instance, subordinate to the control and management of the so-called parent company.

Pending efforts to dispose of General Engle's stock in accordance with the plan just generally indicated, certain purchasers of or subscribers to the stock, professing dissatisfaction with the manner in which the enterprise was being exploited, united in filing a bill in the Supreme Court of the District of Columbia, having for its ultimate object the wresting of the control of the enterprise from the management of the inventor and the appointment of a receiver to take over the affairs of the Company, to the end of accomplishing the purpose of the complainants in the cause. In the course of the litigation thus instituted, which terminated in a dismissal of the bill therein with an allowance against the complainants of costs and damages for the wrongful suing out of the injunction, which was prayed for by them and allowed, counsel employed in behalf of the Company and the inventor was of opinion, and so advised, that the existing Company, incorporated and organized under the laws of the District of Columbia, possessed such infirmities of structure and restriction of powers as to make impossible the carrying out of the general plan of exploitation indicated, and required the incorporation and organization of a new, separate and distinct Company under the laws of another jurisdiction, which would afford the adequate powers to meet the purpose in hand.

62 Accordingly, the matter was duly brought to the attention of the stockholders of the Company by circular information in that behalf, and a special meeting of the stockholders was called to consider and deal with the subject. This meeting was duly held October 6, 1914, there being represented thereat the holders, in person, of One hundred ninety-nine thousand, one hundred forty-six (199,146) shares of the capital stock, and by proxy, One hundred ninety-six (196) shares, making in all One hundred ninety-nine thousand, three hundred forty-two (199,342) shares, leaving unrepresented but Six hundred fifty-eight (658) shares of the entire Two hundred thousand (200,000) shares outstanding. Upon full consideration of the matter, the holders of the entire One hundred Ninety-nine thousand, three hundred forty-two (199,342) shares represented, with the exception of one (1) holding four (4) shares, who did not vote, and one holding one share, who voted in the negative, the proposed plan was adopted. This plan involved, among other things, the exchange by holders of stock in the old Company of their shares therein for an equivalent number of shares, respectively, in the new Company, incorporated and organized, by the same name as the old Company, under the laws of the State of Arizona, and the sale and transfer to the latter Company of all the properties and assets of the former, including the patent and patent rights of the invention, present and prospective. In accordance with this plan, the property and assets mentioned have been acquired by the new Company, and the holders of One hundred ninety-nine thousand seven hundred thirty-nine and one-half (199,739½) shares of the old Company have exchanged their stock for that of the new, leaving unexchanged only Two hundred
63 sixty and one-half (260½) shares of the old Company. In this condition the outstanding shares of the new Company remain at this time, and the management of the new Company continues in the same hands as that of the old.

Continuing their unfriendly attitude to this management, certain of the holders of the unexchanged stock of the old Company have circulated certain statements intended and hoped to be detrimental to the enterprise, and, in that behalf, have not only instituted certain civil litigations, but also have, through the usual ex parte representations made before a grand jury, in the absence of opportunity to be heard by those against whom they are made, procured an indictment rendered August 4, 1915, against General Engle for alleged false representations concerning his invention, on the strength of which, as alleged, he procured from two of the persons indicated certain sums of money for and on account of certain portions of his stock, and this indictment is now pending. Counsel retained to defend General Engle against this indictment have advised him, first, that the allegations thereof are in their essence only of certain pretended exaggeration of statement, as to the state of his battery and its possibilities, and secondly, that the testimony submitted for the consideration of counsel, to be presented on the trial of the indictment, if one be had, will fully and completely

repel in matter of fact the charges upon which the indictment was procured, and which it embodies.

Because of the legal insufficiency of the indictment in setting forth the charges therein, counsel have filed a demurrer
64 thereto, which in due course will be heard, but, even assuming that it should be the opinion of the court that those allegations, however general, should be met, it may confidently be said that they will be met and effectively refuted.

By these activities on the part of those unfriendly to the present management of the Company's enterprise, and the inevitable impression occasioned by such tactics and proceedings, whether justified or not, in either law or fact, the Company's enterprise has been halted, and in various specific instances certain efforts of the management have been for the time being nullified: as, for example, in the case of an agreement made with certain parties looking to the exploitation of the battery as a primary battery only, the carrying out of which agreement has been effectively prevented; and, in the case of an endeavor, all but successfully accomplished, to procure the erection of a factory in one of the states for the manufacture of the battery, towards which bona fide and commercially wholly good subscriptions, to the amount of Fifteen thousand Dollars (\$15,000) have been made. In addition, these activities have resulted in the postponement of the payment by the makers thereof of perfectly good obligations given by them on account of the enterprise, to the extent of Six thousand Dollars, (\$6,000) a large proportion of which would ere now have been paid and devoted to the Company's purposes.

Notwithstanding that the Company has thus been hampered in the manner and by the means indicated, it not only possesses the valuable invention of General Engle's battery and the patent rights,
65 present and prospective, thereto, but also has a factory equipment and material, of the fair value of Ten thousand Dollars (\$10,000), has no debts, and has the benefit of the still uncanceled subscriptions aforesaid, namely, Fifteen thousand Dollars (\$15,000), and the obligations mentioned, namely, Six thousand Dollars (\$6,000), which, although by their terms payable to General Engle, are yet obligated to be devoted to the exploitation of the enterprise and the interests of the Company.

And, notwithstanding the activities which have been displayed in manner aforesaid against the Company and its enterprise, both the management of the Company and others who have carefully inquired into, examined and studied General Engle's invention and the battery devised by him for its commercial utilization, have unimpaired and unqualified confidence therein; but, obviously, unless present obstructions to its exploitation be overcome, the Company cannot hope to make satisfactory progress in its efforts in the premises. To the end of removing these obstructions and the devising of means to put the Company in a way to the realization of its hopes, this statement is submitted for your consideration, and your hearty cooperation with the management is confidently asked.

The election of officers being next in order, upon motion duly

made, seconded and carried, the secretary was directed to cast their votes by the unanimous vote of all stockholders present, and represented, for the election of George S. Engle, A. M. Buxton and W. E. Berry as directors of the Company for the ensuing year, which votes were cast accordingly and the aforesaid persons unanimously elected.

Thereupon Mr. Henry E. Davis addressed the meeting at length, and explained the history and situation of the company, 66 showing that despite the pendency of certain civil proceedings and the indictment against George S. Engle, the outlook for the future was a bright one, and that the officers should be encouraged to go on to develop the enterprise upon its merits, regardless of petty hindrances.

Thereupon Mr. W. C. Burwell, one of the stockholders attending the meeting from his home in Providence, R. I., addressed the meeting to the effect that he had personally known General Engle since 1901, and considered it a privilege to state that in all of his intimate associations with him, he had found him to be a truthful, honest and able man; that he had met him originally when the General was experimenting with his battery and had known him intimately ever since; that when General Engle applied for admission to the bar as a lawyer in Rhode Island, the Examining Board, which in all cases does not favor admitting non-residents to practice, took about six weeks to investigate General Engle's moral and legal standing and could find nothing against him; that the chairman of the Examining Board told the speaker that they could find nothing against the General's character or ability; and that the result of this thorough inquiry was strong evidence of his moral and mental equipment. The speaker also decried the efforts that had been made to discredit General Engle, and the slanderous and petty annoyances which his enemies had attempted to put in his path; and urged that he should be encouraged to go on and complete the work he had undertaken, and strongly reminded all present that a receivership would be a death-blow to the enterprise, as in his experience a receivership was 67 not constructive and was per se baneful, only resulting as a rule in the acquisition of any rights by a few conspiring stockholders for their individual benefits. At the conclusion of his remarks, Mr. Burwell was applauded at length.

Thereupon General Engle addressed the meeting and reiterated his determination to prevent the patent rights of the company from coming into the possession of centralized capital, and his further determination to see that the people should share in the results of his invention. Respecting the fact that he holds such a large control of the Company, he desired to place himself on record before all the stockholders, as he has repeatedly stated to the Directors and counsel of the Company, that, while holding the control from which it was his purpose to finance and promote the Company's operations he did not expect to receive, and would not accept, dividends from the Company's earnings in proportion to his large holdings of stock, but would accept and receive dividends only in proportion to the stock held by the stockholders at large.

There being no further business, the meeting upon motion duly made and carried, was adjourned.

(Signed)

A. L. NEWMYER, *Secretary*.

EXHIBIT C.

This Agreement, made this nineteenth day of February, A. D. 1914, between Charles R. Normandy, Business Manager, party of the first part, and M. B. Nicol and John A. Nicol, parties
68 of the second part.

Witnesseth, That for and in consideration of the sum of five hundred (500) Dollars, to them in hand paid, receipt whereof is hereby acknowledged, and the agreement hereby made providing for further payments to be made, \$250. thirty days from date, \$250. sixty days from date, and \$250. ninety days from date, together with the surrender by the party of the first part of all unpaid notes given by the parties of the second part (or either of them) on the purchase of certain State Options; and further in consideration of the cancellation of all obligations incurred (and not matured) by the parties of the second part (or either of them) in the purchase of such options; and in view of other valuable considerations;

The parties of the second part do hereby agree to use their best endeavors to satisfactorily adjust all deals negotiated by them with their clients and customers, and to surrender to the said first party contracts purchased by them for State Options, to the extent of the cash payments actually made and to be made, in such proportion as the said payments bear to the sums expended on said options by said second parties, less the commissions received by them. (That is to say, 80% of the nominal sums; for instance, for \$480. the Montana contract will be surrendered, for, \$1200. the Delaware, for \$320. Hawaii, and for \$240. Wyoming).

It is further agreed and understood by and between the parties hereto, that if the party of the first part shall make other and further payments to the parties of the second part, the parties of the second part will surrender, pro rata, on the same terms as above described, contracts or portions of contracts on the Virginia
69 State Options not then sold and transferred to third parties, and still remaining the property of the said parties of the second part.

In Testimony Whereof, the parties hereto have set their hands and seals the day and year first above written.

(Signed)

(Signed)

GEO. S. ENGLE, *Gen'l Mgr.* [SEAL.]
M. B. NICOL. [SEAL.]
JOHN A. NICOL, [SEAL.]
By M. B. NICOL. [SEAL.]

EXHIBIT D.

In the Supreme Court of the District of Columbia, Holding an
Equity Court.

Equity. No. 33856.

CHARLES R. NORMANDY et al., Plaintiffs,

vs.

AMERICAN ELEMENTARY ELECTRIC COMPANY et al., Defendants.

*Affidavit of F. Edgar Buxton in Support of the Answer of the
Defendants in the Above-entitled Cause.*

DISTRICT OF COLUMBIA, ss:

Before me, a Notary Public in and for the District aforesaid, personally appeared F. Edgar Buxton, who being by me first duly sworn, deposes and says:

I was a stockholder of the defendant American Elementary Electric Company, denominated in the answer of the defendants in
70 the above entitled cause District Company, and, after the meeting of the stockholders of the said Company, on October 6, 1914, mentioned in the said answer, exchanged my stock in the said Company for an equivalent amount of the stock of the defendant American Elementary Electric Company, denominated in the said answer Arizona Company, and I am still a stockholder of the latter Company.

On August 18, 1915, was present at a meeting called as a meeting of the American Elementary Electric Company, and held in Room 626 Woodward Building, in the City of Washington, District of Columbia, at which were present a number of persons, including many of the plaintiffs in the above entitled cause, there being present in all approximately forty persons.

The plaintiff Normandy was made Chairman of the meeting and stated that its object was to take action with a view to putting "the Company" in the hands of receivers. Following this statement, the plaintiff Normandy made a general address or statement to the meeting, in which he said, among other things, as follows: that the Engle battery was the best of all primary batteries; that he considered that the defendant Engle had grouped together elements never before used and had the best battery in the world; that, if he had the money, he, Normandy, would buy out the stockholders and run the battery himself, and make a fortune; that he, Normandy, had in his possession the only full and complete set of papers, records, data, &c., relative to the battery, its development, tests, worth, &c.; and that he Normandy, would not give what he possessed, and his information in the premises, to the defendant Engle.

F. EDGAR BUXTON.

71 Subscribed and sworn to before me this 10th day of November, A. D. 1915.

[SEAL.]

OLLEZE BISHOP,
Notary Public, D. C.

Order Appointing Receiver.

Filed May 18, 1916.

* * * * *

Upon consideration of the Bill of Complaint and Exhibits therewith filed, and the Answer of the defendants and the Exhibits therewith filed in the above entitled cause, and after hearing argument of counsel for the respective parties, the Court is fully satisfied that a Receiver pendente lite should be appointed to take charge and possession of the goods, wares, merchandise, books, papers and effects of, or belonging to, the defendant, American Elementary Electric Company of the District of Columbia, including such as appear in the name of the American Elementary Electric Company of the State of Arizona, it is this 18th day of May, 1916,

Ordered, that Jesse C. Adkins be, and he is hereby appointed Receiver pendente lite of said Company to take hold of, preserve, collect and administer under the direction of the Court all the assets, property and effects of every name and nature belonging to the said Company.

And, it is further ordered that before the said Jesse C. Adkins proceeds to act as Receiver by virtue of this Order, he shall
72 give bond in the penalty of Five thousand dollars (\$5,000.00), with a surety or sureties to be approved by this Court, and conditioned for the faithful performance of the trust reposed in him by this Order, or which may be reposed in him by any further Order or Decree in this case.

THOS. H. ANDERSON, *Justice.*

Order Fixing Penalty of Bond on Appeal.

Filed June 2, 1916.

* * * * *

Upon consideration of the motion of the defendants, appellants, in the above-entitled cause, praying the court to fix the penalty of the bond on their appeal, taken in open court, from the order of the 18th day of May 1916, appointing a receiver as in and by the said order appearing, It is, this 2d day of June, 1916, ordered that the penalty of the said bond, to act as a supersedeas, be and it hereby is, fixed at the sum of three thousand Dollars (\$3,000.) and George W. Ray is hereby approved as surety on the said bond, and the clerk of the Court is authorized to approve the same when duly executed.

WENDELL P. STAFFORD, *Justice.*

73

Memorandum.

June 5, 1916—Appeal Bond for \$3000 approved and filed.

Memorandum for Transcript of Record.

Filed June 6, 1916.

* * * * *

The Clerk will please include in the transcript of record on the appeal of the defendants in the above entitled cause the following:

1. Original bill and exhibits thereto.
2. Rule to show cause issued on the bill.
3. Answer of defendants and exhibits thereto.
4. Order of May 18, 1916, appointing receiver.
5. Order of June 2, 1916, fixing penalty of bond on appeal, etc.
6. Memorandum of filing bond and approval thereof.
7. This memorandum.

HENRY E. DAVIS,
ALVIN L. NEWMYER,
Attorneys for Defendants.

June 6, 1916.

74

Assignments of Error.

Filed June 9, 1916.

* * * * *

The court erred as follows:

1. In making the order of May 18, 1916, appointing a receiver pendente lite herein.
2. In not discharging the rule to show cause issued upon the Bill of Complaint, and refusing to appoint such receiver.
3. In holding that the plaintiffs in and by their bill have made or stated such a case as entitles them to the appointment of such receiver, or any receiver herein.
4. In not holding that the plaintiffs have a full, adequate and complete remedy at law, if any remedy whatever, in respect of the premises set forth in and by their bill.
5. In not holding that the transmutation, in effect, of the defendant, American Elementary Electric Company of the District of Columbia, into the defendant, American Elementary Electric Company of Arizona, was and is not, in all things, good and sufficient in law.
6. In not holding that the transfer and conveyance by the said

defendant, American Elementary Electric Company of the District of Columbia, of all the property, assets, and rights, of what kind and character soever, formerly of it, subject to the obligations and liabilities thereof, to the defendant, American Elementary Electric Company of Arizona, was and is, good, valid, and binding, in law.

7. In not holding that the defendant, American Elementary Electric Company of Arizona, became and now is, in fact
75 and in law, successor of the defendant, American Elementary Electric Company of the District of Columbia.

8. In holding that by interlocutory order and proceedings in that behalf, the transfer and conveyance by the defendant, American Elementary Electric Company of the District of Columbia, of its property, assets, and rights, aforesaid, to the defendant, American Elementary Electric Company of Arizona, could be, in effect, vacated and for nothing held, so as to authorize, or empower, the Court to appoint a receiver as aforesaid.

9. In not holding that the interests of the plaintiffs in the premises set forth in and by their bill, are such and so slight as to disentitle them to impeach or question the transaction between the defendant, American Elementary Electric Company of the District of Columbia, and the defendant, American Elementary Electric Company of Arizona, or to prevent the transmutation, in effect, of the former into the latter, in manner and under the circumstances appearing.

10. In not holding that the only right of the plaintiffs, stockholders of the defendant, American Elementary Electric Company, in the premises, if any, is to have and receive, of the defendant, American Elementary Electric Company of the District of Columbia, or the defendant, American Elementary Electric Company of Arizona, the value of the shares of stock of the said first mentioned defendant, held by them, such plaintiffs, respectively.

11. In not holding that the plaintiffs, stockholders of the defendant, American Elementary Electric Company of Arizona, have no right of what kind soever, to bring or maintain the Bill of
76 Complaint herein, or to impeach or question the transaction aforesaid.

HENRY E. DAVIS,
ALVIN L. NEWMYER,
Attorneys for Defendants, Appellants.

77 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 76, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 33856 in Equity, wherein Charles R. Normandy and Others are Defendants and American Elementary

Electric Company, a corporation of the District of Columbia and Others, are Defendants, as the same remains upon the files and of record in said Court.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 3rd day of July, 1916.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk*.

Endorsed on cover: District of Columbia Supreme Court. No. 2989. American Elementary Electric Company, etc., et al., appellants, vs. Charles R. Normandy, H. C. Hallam, C. Keiser, et al., appellees. Court of Appeals, District of Columbia. Filed Jul- 10, 1916. Henry W. Hodges, Clerk.

COURT OF APPEALS
DISTRICT OF COLUMBIA
FILED

AUG 3 1916

IN THE *Henry W. Hodges*
Clerk

Court of Appeals, District of Columbia

October Term, 1916.

No. 2989.

AMERICAN ELEMENTARY ELECTRIC COMPANY, ETC., ET AL.,
Appellants,

vs.

CHARLES R. NORMANDY, ET AL.,
Appellees.

APPEAL FROM THE SUPREME COURT OF THE
DISTRICT OF COLUMBIA.

BRIEF FOR APPELLANTS.

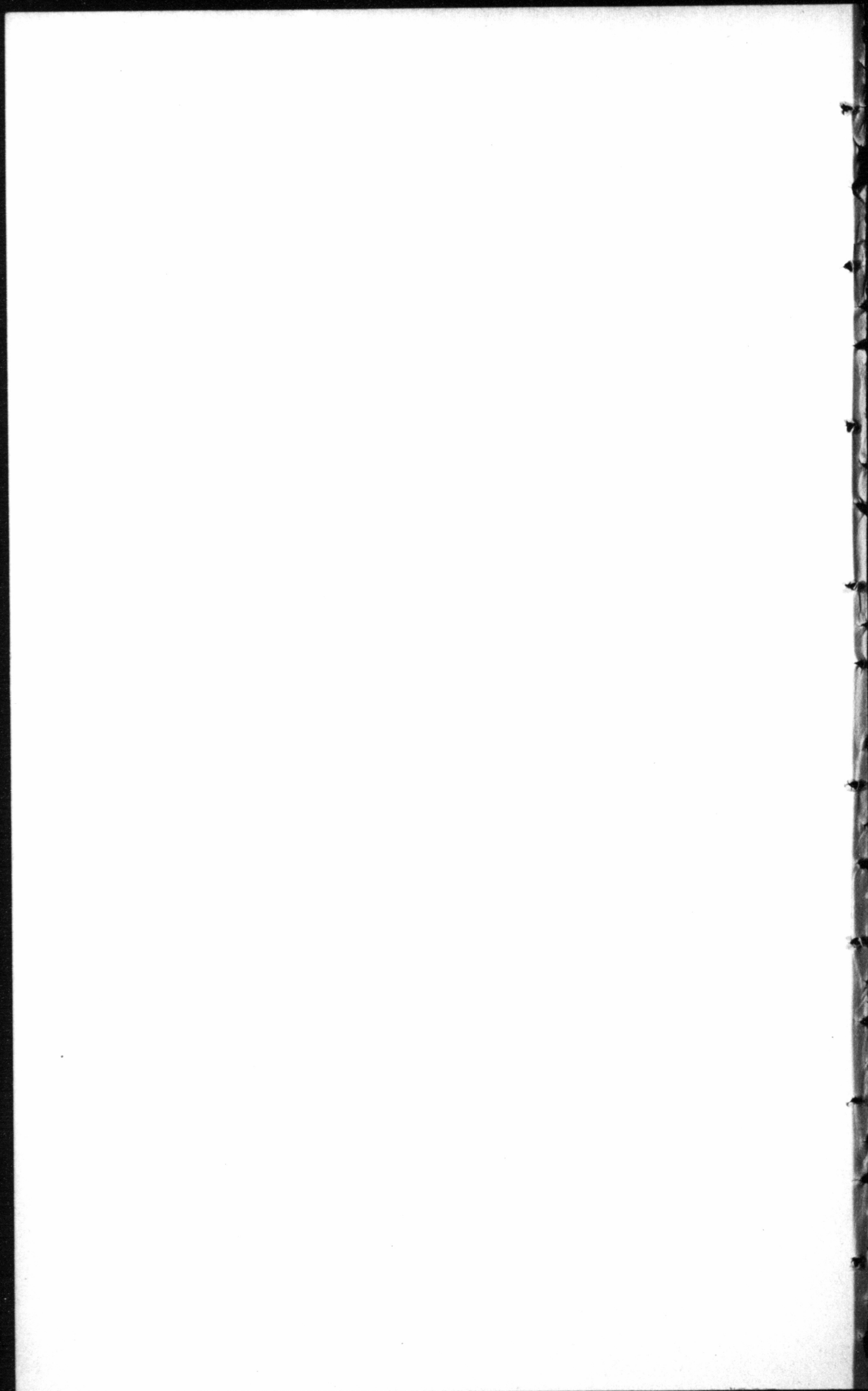
HENRY E. DAVIS,
ALVIN L. NEWMYER,
Attorneys for Appellants.

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IN THE
Court of Appeals, District of Columbia

October Term, 1916.

No. 2989.

AMERICAN ELEMENTARY ELECTRIC COMPANY, ETC., ET AL.,
Appellants,

vs.

CHARLES R. NORMANDY, ET AL.,
Appellees.

APPEAL FROM THE SUPREME COURT OF THE
DISTRICT OF COLUMBIA.

BRIEF FOR APPELLANTS.

I.

STATEMENT OF THE CASE.

This is an appeal from an order appointing a receiver *pendente lite*, made upon the bill of complaint and answer, and the respective exhibits thereto, in which the appellees

(hereinafter called plaintiffs), were plaintiffs, and the appellants (hereinafter called defendants), defendants below. (Rec., 40.)

Plaintiffs, fifty-four in number, describe themselves as security owners and stockholders of the American Elementary Electric Company, a corporation of the District of Columbia (hereinafter called District Company), and profess to sue in their own rights, and in behalf of such other persons in like situation who may desire to join and contribute to the costs of suit. (Bill, par. 1; Rec., 2-3.)

Defendants are described as American Elementary Electric Company, a corporation of the District of Columbia, and George S. Engle, individually and as General Manager and Sole Executive Committee of said corporation, and American Elementary Electric Company, a corporation of the State of Arizona (hereinafter called Arizona Company). (Rec., 2.)

The material allegations of the bill are as follows:

Defendant District Company is a corporation under the laws of the District of Columbia, with an authorized capital stock of \$25,000,000, divided into 250,000 shares, of the par value of \$100 per share, and is sued in its corporate capacity. (Par. 1; Rec., 3.)

Defendant Engle is sued individually and as General Manager and Sole Executive Committee, and a stockholder, of the District Company. (Par. 3; Rec., 3.)

Defendant Arizona Company is a corporation under the laws of the State of Arizona, with capital stock similar to that of the District Company, and is sued in its corporate capacity. (Par. 4; Rec., 3.)

Plaintiffs are owners of a large portion of the capital stock and securities of the District Company now outstand-

ing; and they, together with others in like situation but not parties to the bill, paid defendant Engle, in his capacity as General Manager and Sole Executive Committee of said corporation, about \$26,000. Plaintiffs are informed and believe, and therefore aver, that, at the time of the sale to them, and others similarly situated, of the securities of the District Company, known as "State Option Contracts, Series A and B," of said corporation, Engle, who was then claiming to be General Manager and Sole Executive Committee of the corporation, held in his name about \$20,000,000 of the \$25,000,000 authorized capital stock of the Company, and claimed to own the same in consideration of his conveyance to the Company of certain United States Letters-Patent and pending applications for such, respecting a certain electric battery, known as "Engle Primary Battery," which stock holdings of Engle plaintiffs say were fraudulent and void, for the reason that all of the said stock was illegally issued and delivered to Engle upon certain alleged false statements and misrepresentations regarding the said battery. (Rec., 3-5.)

After Engle had obtained control of the capital stock of the District Company in manner aforesaid, he was able to obtain absolute domination of the Company through the voting of a large majority of its stock, and thereby was able, through officers who owed their appointment solely to him, to procure for himself absolute control and administration of the Company's affairs, having himself elected General Manager and Executive Committee of the corporation, and in his capacity as such he exercised absolute control of the business affairs and policies of the Company, including the issuance of its State Option Contracts, Series A and B, and its capital stock, etc.; by which, and other means, Engle made the Company a one-man concern, controlled and operated for his benefit and in his interests, to

the damage of plaintiffs and all others who invested their funds in the securities and stock of the Company. (Par. 6; Rec., 5.)

After Engle had obtained full and absolute control of the business and affairs of the District Company in the manner aforesaid, claiming to act for the Company as its legal General Manager and Sole Executive Committee, he sold to plaintiffs, and many other persons, the certain securities of the Company known as State Option Contracts, Series A and B, to an amount approximating more than \$65,000, and as the trust officer of the Company received that amount in cash, according to the best knowledge, information and belief of plaintiffs, who are informed and believe, and therefore aver, that Engle has appropriated to his own use, or secreted, substantially all of the said amount of money of the District Company, and has failed and refused to account therefor to the Company or to plaintiffs as the owners of securities thereof, under the specious, false and fraudulent contention that said funds belong to him personally and not to the Company, as the funds were received by him as purchase money for his private stock in the Company, and not in his capacity as General Manager and Sole Executive Committee of the Company. This contention of Engle's is false and fraudulent, for that the said funds were received by him as proceeds from the sale of the securities of the District Company aforesaid, and not from the sale of his private stock, as by him contended. (Par. 7; Rec., 5-6.)

Defendant District Company was incorporated for certain specified general objects, and for a short time after Engle had obtained absolute control of the Company in the manner aforesaid the Company, by and through Engle, as its General Manager and Sole Executive Committee, undertook, in a most ineffective, reckless, promotive and

fraudulent manner, to carry out some of the corporate objects of the Company, but in October, 1914, the Company, with the approval, by the request, under the direction and absolute control of Engle, through his majority stock control, in derogation, breach and absolute disregard of vested rights of plaintiffs, and other persons in like situation, entirely abandoned and attempted to put out of existence the District Company, by abandonment of its charter and charter rights; and since said month the Company has held no stockholders' or directors' meetings; has had no executive management whatever, and has transacted no business in the interest or advancement of the purpose for which it was formed. In that manner the vested rights of plaintiffs, as owners of the securities of the Company and stockholders therein, have been abandoned and left in a state of absolute neglect. (Par. 8; Rec., 6-7.)

On information and belief plaintiffs aver that in the latter part of 1914 the District Company, through the domination and control of Engle, through the voting of his large majority of stock therein, obtained as aforesaid, attempted to transfer and deliver all of its assets and properties to the Arizona Company, without any valuable consideration accruing to the District Company, or to plaintiffs as owners of the securities and stock thereof, and in breach and derogation of their vested rights as such; that the Arizona Company is financially irresponsible and possessed of no property or assets other than those attempted to be conveyed, transferred and assigned to it by the District Company, without valuable consideration; and that plaintiffs believe that if the Arizona Company is permitted to continue in possession of the properties, assets and franchises of the District Company, the vested rights of plaintiffs, as aforesaid, will be entirely dissipated, and the value of their securities and stock wholly destroyed, to their irrep-

arable damage and loss, for which they have no adequate remedy at law. (Par. 9; Rec., 7-8.)

A number of plaintiffs have been denied admission to the stockholders' meetings of the Arizona Company, and have been denied all information with reference to its plans and policies, and have never been able to procure any showing or information as to the terms, conditions, nature and extent of the transfer and assignments claimed to have been made by the District Company to the Arizona Company; nor have they ever realized or been paid anything on account of their securities of the District Company from the proceeds of the alleged sale of all of its assets to the Arizona Company; nor have they been offered any State Option Contracts of the latter, or anything else of value, for their securities in the District Company; and, further, if said pretended transfer and sale of all of the assets of the District Company has been made to the Arizona Company, which has been done without the consent or privity of plaintiffs and against their wishes, the same is a fraud upon their rights as owners of the securities and stock of the District Company; and they aver that said transfer was without valuable consideration to either the District Company or plaintiffs as owners of its securities and stock. (Par. 10; Rec., 8.)

On information and belief plaintiffs aver that the aforesaid sum of more than \$65,000 was received by Engle from the sale of the securities of the District Company known as State Option Contracts, Series A and B, in his trust capacity as General Manager and Sole Executive Committee of the Company, and that, notwithstanding this fact, plaintiffs believe and allege that Engle has squandered, misappropriated, dissipated, wasted, or secreted substantially all of the said amount, and, if any portion thereof still remains, the remainder, according to the best belief of plaintiffs, will

be expended, misappropriated, or secreted by Engle, unless some quick relief is awarded plaintiffs, and thus their vested rights, as owners of the securities and stock of the District Company, will be irreparably and irretrievably destroyed (Par. 11; Rec., 8-9.)

Since October, 1914, plaintiffs, as owners of the securities and stock of the District Company, have been given no notice of any of the meetings of the stockholders or directors of the Arizona Company, and all the plaintiffs who have applied for admission to such meetings have been refused admission thereto, and have been denied any rights whatever to participate in the said meetings, or to learn anything about said Company's affairs, and have been refused all information regarding the plans and policies of said Company, notwithstanding the fact that all of the assets, rights and franchises of the District Company, of the securities and stock of which plaintiffs are owners, are alleged and claimed to have been conveyed, assigned and transferred to the Arizona Company. (Par. 12; Rec., 9.)

At the hearing of a certain equity case in the Supreme Court of the District of Columbia, the testimony given showed such conduct on the part of Engle that the said testimony was referred by the Court to the United States District Attorney, and subsequently an indictment against Engle was returned, charging him in seven counts with the criminal offense of false pretenses, the specific charge thereof being that Engle obtained from two of the plaintiffs, namely, John A. and M. B. Nicol, large sums of money by color and means of false and fraudulent misrepresentations in regard to the "Engle Primary Battery"; which said indictment is now pending for trial, and notwithstanding Engle's alleged misconduct and indictment, he still assumes to control all of the money, assets and affairs of the District Company and the Arizona Company, whereas in justice

and protection of the vested rights of the plaintiffs, as owners of the securities and stock of the District Company, the business, moneys and affairs of said Company should be in charge of a receiver. (Par. 13; Rec., 9-10.)

According to the best knowledge, information and belief of plaintiffs, Engle has taken, or attempted to take, substantially the same amount of capital stock of the Arizona Company as he had in the District Company, in the same manner and by the same means as set out as aforesaid, and through his majority stock in the Arizona Company Engle absolutely dominates and controls its business, affairs, funds and assets. (Par. 14; Rec., 10.)

A number of civil suits have been filed against the District Company and Engle individually, involving large sums, and plaintiffs believe and aver that said suits will not be diligently and carefully defended in the interests of plaintiffs, as the owners of securities and stock of the said Company, but on the contrary will be defended in a manner detrimental to, and destructive of, the vested rights of plaintiffs as the owners of securities and stock of the said Companies aforesaid. (Par. 15; Rec., 10.)

By reason of the mismanagement and misconduct of Engle in his capacity as General Manager and Sole Executive Committee of the District Company, as hereinabove set out, plaintiffs are justly apprehensive that the properties, rights and franchises of the said Company will speedily be dissipated and destroyed, to the manifest injury of its creditors, if any, as well as the plaintiffs and other holders and owners of securities and stock of the Company, unless the Court shall take immediate possession and control of the Company by a receiver. (Par. 16; Rec., 10.)

Plaintiffs are advised and believe, and therefore aver, that by reason of the premises they are entitled to have the equitable aid of the Court to the end that the attempted

sale and conveyance from the District Company to the Arizona Company may be set aside, vacated and held for naught, and their rights and interests in the properties, assets and franchises thereby sought to be disposed of may be secured, reserved and restored; that Engle is not a fit and suitable person to be entrusted with the further administration of the trust reposed in him, and a receiver should be appointed to take charge of and administer the business, affairs, assets and funds of the District Company, including as well all of the assets, funds, rights and franchises attempted to have been conveyed by the District Company to the Arizona Company. (Par. 17; Rec., 10, 11.)

The prayers of the bill, six (6) in number, are for process, discovery, and vacation of the conveyance from the District Company to the Arizona Company, and of any and all the transactions which may have taken place between the two Companies; for a rule to show cause why a receiver should not be appointed to take charge of, collect and manage the property, and to conduct, carry on and administer the business, affairs, properties, assets and credits, sold and conveyed, or attempted so to be, by the District Company to the Arizona Company, pending the final disposition of the cause; and that all proper accounts may be taken between plaintiffs and defendants, generally and severally; and for general relief. (Rec., 11-12.)

It would serve no useful purpose, and is unnecessary, to set forth the allegations of the voluminous answer of the defendants (Rec., 16-39) in response to all the respective allegations of the bill. As respects the very general and sweeping allegations of fraud, false representations and the like, contained in the bill, it suffices to say that the answer specifically denies each and every of all such allega-

tions. As respects many other of the allegations of the bill, the same are obviously unimportant to be considered at this stage of the cause. And so far as the allegations of the bill are material to be considered for present purposes, the following statements of the answer, which are set forth without regard to the order in which they appear therein, but with strict regard to their essentials, present the case for the defendants.

Defendant Engle is the inventor of a certain electrical battery, known as the "Engle Primary Battery," and being of great value and promise. In order to place his invention upon the market and exploit the same, Engle decided to adopt the usual instrumentality of a body corporate for that purpose, and finding already in existence, in supposed compliance with the laws of the District of Columbia, a corporation by the name of American Dynelectron Company, he acquired control thereof, and afterwards, by order of Court, procured the name of the said Company to be changed to American Elementary Electric Company, and such always has been, and is, the defendant District Company.

The amount of capital stock of the Company was fixed by its certificate of incorporation, by the name of the American Dynelectron Company, at \$25,000,000, divided into 250,000 shares of the par value of \$100 each. In accordance with common practice in that behalf, Engle made over his invention to the Company in consideration of the issue to him of its entire capital stock, of which he placed in the treasury 50,000 shares, of the par value of \$5,000,000, retaining as his own the remaining 200,000 shares, of the par value of \$20,000,000, and was duly elected and constituted President, General Manager, and Executive Officer of the Company.

Thereupon, believing such to be in all respects lawful and practicable under the laws of the District of Columbia, and not being otherwise advised, the District Company and Engle conceived and undertook to put into execution a general plan of organizing, throughout the several States of the United States, local corporations to be subsidiary to the District Company as a parent Company, and, in that behalf, caused to be prepared certain State Option Contracts, so-called, in accordance with which, among other things, the promoters of the organization of the local corporations or State organizations, upon the purchase at par of certain shares of stock of the District Company, of the holdings of Engle, and the actual organization of the said several local or State corporations and the purchase at par of certain shares of stock thereof, should receive, by way of bonus in remuneration of their early participation, investment and promotion services in the premises, certain additional shares of stock of the local or State corporations, it being the intent and purpose to keep the shares of stock in the District Company in its treasury intact until the enterprise should have been placed upon a practical and commercial basis and standing, Engle undertaking to meet and pay, in the meanwhile, out of the sums of money received by him for his individual stock, all necessary expenses of the enterprise; and part of the said plan involved and required the delivery to the District Company, as parent Company as aforesaid, of a certain proportion of the stock of each of the said local or State corporations, with the right to the District Company to be represented temporarily in the management of each of the said local corporations and in the directory thereof. The said State Option Contracts, so-called, are the securities, so-called, mentioned by plaintiffs in their bill of complaint herein. (Par. 18; Rec., 21-2.)

These State Options, so-called, were and are, in form

substance and effect, agreements between the District Company and Engle, as of the first part and certain individuals, respectively, as of the second part, giving and granting the latter options, so-called, on the organization of subsidiary companies as aforesaid, and, among others, upon the terms aforesaid respecting subscriptions to and payments for stock of the District Company, and of the several subsidiary companies, with the right of bonus as to stock of the latter as aforesaid; and the benefit of each such State Option Contract to the party thereto of the second part was the privilege, to the exclusion of others, of organizing such subsidiary companies in each particular instance, which benefit and advantage could and would accrue only upon the organization, through the efforts of the party of the second part, of such subsidiary company, and the procurement by him of the subscriptions aforesaid; wherefore, each of the said State Option Contracts was only in fact and in law a bipartite agreement, upon the performance by the party of the second part of his undertakings in the premises, and upon such performance only, did he or could he become entitled to any claim upon the parties of the first part, and no such State Option Contracts can, or could, in any proper sense be called, or considered, as a security of the District Company as claimed by the bill. (Par. 21; Rec., 26.)

Pending the effort to exploit the said invention in manner aforesaid, the progress thereof was seriously hampered and interfered with by certain proceedings and the actions of certain persons who had become interested in the District Company (Rec., 22-3), and in the condition thus brought about, which developed within six months from the first practical endeavor to establish the subsidiary companies and to install and equip a laboratory and workshop for the development and production of specific types of the battery, the District Company and Engle were advised by

counsel of certain legal difficulties in the premises, as follows:

In the certificate of incorporation of the Dynelectron Company (afterwards by change of name, as above stated, the District Company), the objects for which the same was organized are stated to be

“for the purpose of conducting a general manufacturing business in all details, anywhere in the world. Manufacturing, buying, selling and dealing in all kinds of goods, wares and merchandise, including dynelectrons, all kinds of power heating and illuminating plants. Issue and dispose of notes, bonds and other evidences of indebtedness, contracts, franchises, patents, patent rights, trade-marks, privileges, etc., and in connection with the above to engage in any line of business necessary or convenient for the best interest of the Company, not inconsistent with the law. Acquiring and disposing of the necessary real estate, and to have all other rights, powers and privileges conferred by the laws upon corporations.” (Rec., 17-18.)

The District Company and Engle were advised that, because of the number and diverse and unrelated natures of the objects thus specified, the act of incorporation of the Company was of doubtful validity, if indeed not absolutely void, or at least certainly voidable upon the institution of due proceedings in that behalf; and, further, that the change of name of the Company, as aforesaid, was likewise of doubtful validity; and, especially, that, under the laws relating to incorporations of the District of Columbia, it would be unlawful and impossible to carry out the plan for the organization of subsidiary companies, as the said laws do not provide or contemplate that a corporation of the District of Columbia can hold stock in another corporation, or become, or be, such a holding or parent com-

pany as the said plan contemplated and provided as its central and chief feature: wherefore, the District Company and Engle were advised by counsel that it would be prudent, if indeed not indispensably necessary, if the operations of the Company were to be continued in and carried out in manner aforesaid, that there should be organized under the laws of some other jurisdiction than the District of Columbia, a new and independent corporation, about whose powers and privileges in the premises there could be no doubt, and into which, as its successor in law and in fact, the District Company could, in effect, be transmuted. (Rec., 23.)

Acting upon such advice of counsel in the premises, the directors of the District Company issued to all of its stockholders notice of a meeting to be held for the purpose indicated. The call for the meeting (Rec., 30-2) fully and explicitly set forth its reasons and necessity, and distinctly informed each and every stockholder of the Company of the proposed proceeding and the details of its carrying out. The scheme proposed, in its essentials, was merely that a new company of the same name should be organized in a suitable jurisdiction, with the same capitalization as the District Company; that the stockholders of the District Company should exchange their stock for that of the new Company; that all of the assets and property of the District Company should be sold, transferred and conveyed by the District Company to the new Company, upon condition of the assumption by the latter of all of the obligations of the former; and that the District Company should cease to be a going concern, and all of its operations, present and prospective, be carried on by the new Company as the successor in fact and in law of the District Company.

At the stockholders' meeting thus called there were represented of the 200,000 shares of the District Company out-

standing, 199,146 in person, and 196 by proxy, or 199,342 in all, leaving unrepresented only 658 shares of the entire 200,000 outstanding. The preambles and resolutions set forth in the notice of the meeting were adopted by the vote of 199,337 of such shares, the holder of but one share voting in the negative, and the holder of four shares not voting. (Rec., 24.)

Subsequently to this action of the stockholders of the District Company, the holders of 199,739½ shares respectively surrendered their stock for cancellation, and took in exchange therefor shares of the new Company, in equivalent amounts and to the aggregate aforesaid, leaving outstanding and unexchanged of the stock of the District Company only 260½ shares of an outstanding issue of 200,000 shares; and in consideration of the undertaking by the new, or Arizona, Company to become successor of the District Company, and to exploit and carry out the enterprise and objects for which the latter purported to have been incorporated and organized, the District Company transferred, conveyed and made over to the Arizona Company all of its properties, assets and rights of what kind and character soever, subject to the obligations and liabilities of the District Company, and the Arizona Company accepted and received such properties, assets and rights, subject to such obligations and liabilities; and at the time of the filing of the bill the Arizona Company was earnestly and zealously endeavoring to exploit and carry out the enterprise in hand, namely, the production, manufacturing and placing upon the market of the battery aforesaid in its several types and styles. (Rec., 24-5.)

By its order appointing a receiver *pendente lite*, the Court below held this transaction to be ineffectual and in derogation of the rights of plaintiffs, and, further, that notwith-

standing the infinitesimal minority of the plaintiffs, they holding in the aggregate a minute fraction over one twenty-five hundredth of the number of shares of stock outstanding, are entitled to have the enterprise in question taken from the control of the overwhelming majority of the stockholders and turned over to a receiver.

II.

ASSIGNMENTS OF ERROR.

The Court below erred as follows:

1. In making the order of May 18, 1916, appointing a receiver *pendente lite* herein.
2. In not discharging the rule to show cause issued upon the bill of complaint, and refusing to appoint such receiver.
3. In holding that the plaintiffs in and by their bill have made or stated such a case as entitles them to the appointment of such receiver, or any receiver herein.
4. In not holding that the plaintiffs have a full, adequate and complete remedy at law, if any remedy whatever, in respect of the premises set forth in and by their bill.
5. In not holding that the transmutation, in effect, of the defendant, American Elementary Electric Company of the District of Columbia, into the defendant, American Elementary Electric Company of Arizona, was and is, in all things, good and sufficient in law.
6. In not holding that the transfer and conveyance by the said defendant, American Elementary Electric Company of the District of Columbia, of all the property, assets and rights, of what kind and character soever, formerly of it, subject to the obligations and liabilities thereof, to the defendant, American Elementary Electric Company of Arizona, was and is, good, valid, and binding, in law.
7. In not holding that the defendant, American Elemen-

tary Electric Company of Arizona, became, and now is, in fact and in law, successor of the defendant, American Elementary Electric Company of the District of Columbia.

8. In holding that by interlocutory order and proceedings in that behalf, the transfer and conveyance by the defendant, American Elementary Electric Company of the District of Columbia, of its property, assets and rights, aforesaid, to the defendant, American Elementary Electric Company of Arizona, could be, in effect, vacated and for nothing held, so as to authorize, or empower, the Court to appoint a receiver as aforesaid.

9. In not holding that the interests of the plaintiffs in the premises, set forth in and by their bill, are such and so slight as to disentitle them to impeach or question the transaction between the defendant, American Elementary Electric Company of the District of Columbia, and the defendant, American Elementary Electric Company of Arizona, or to prevent the transmutation, in effect, of the former into the latter, in manner and under the circumstances appearing.

10. In not holding that the only right of the plaintiffs, stockholders of the defendant, American Elementary Electric Company, in the premises, if any, is to have and receive, of the defendant, American Elementary Electric Company of the District of Columbia, or the defendant, American Elementary Electric Company of Arizona, the value of the shares of stock of the said first mentioned defendant, held by them, such plaintiffs, respectively.

11. In not holding that the plaintiffs, stockholders of the defendant, American Elementary Electric Company of Arizona, have no right of what kind soever, to bring or maintain the bill of complaint herein, or to impeach or question the transaction aforesaid.

III.

ARGUMENT.

Preliminary to dealing with the essentials of the case as made by the bill and answer, certain non-essential allegations of the bill, many of them impertinent and scandalous, may have brief attention.

That defendant Engle was the holder, in his own right, of so large a proportion of the capital stock of the District Company, is immaterial to the case sought to be made by plaintiffs, as also is the alleged manner of Engle's acquiring his holdings. The fact is, as stated by the answer in direct response to the allegations of the bill, that Engle procured his stock from the District Company, then known as the Dynelectron Company, in consideration of the conveyance, by him, to the Company, of his invention and the letters-patent, existing and prospective, for the same, a most familiar method of procedure between inventors and corporations organized to exploit the inventions concerned; and it is to be noted that all of the stock claimed to be held by plaintiffs came from Engle's holdings, and not from the treasury of the Company; wherefore plaintiffs are estopped to question the validity of the issue to Engle of the stock by reason of the possession of any part of which plaintiffs alone have any claim to a standing in Court.

Similarly, it is wholly immaterial that, by reason of the extent of his holdings, Engle has the power to control the management of the defendant companies, or either of them, which power it is his right and privilege to have and assert by reason of such, the extent of his said holdings, which plaintiffs at the time of acquiring their stock knew, or in the exercise of reasonable diligence should and would have known.

Again, it is not claimed or contended by the bill, as in fact it could not truthfully be, that plaintiffs, or any of them, were led or induced to acquire the stock claimed to be possessed by them, by or through any such alleged false, fraudulent, or misleading act or representation such as the bill assumes to allege; for that, first, the alleged representations were made, if at all, to the District Company, and not to plaintiffs, or any of them, and secondly, if plaintiffs, or any of them, were in fact, led and induced to procure their stock by or through any such representations, they would have a full, adequate and complete remedy at law against Engle in the premises, but no right or remedy of what kind soever against defendant companies, or either of them.

Furthermore, the value of the invention is immaterial to the matters in controversy as set forth in and by the bill, which is aimed to present the question whether the invention and its exploitation, whatever the value thereof, should remain in the control and administration of defendants, or should be turned over, pending the controversy, to a receiver, with the inevitable result of putting the enterprise to death.

Moreover, the allegations that plaintiffs have never been able to procure any showing or information as to the terms, conditions, nature and extent of the alleged transfer and assignment, claimed to have been made by the District Company to the Arizona Company, are simply recklessly made, seeing that, both in the call for the meeting of the stockholders of the District Company, and in the notification of the action taken thereat (Rec., 30-32), each of which was sent to every stockholder of the Company, the entire transaction was disclosed in fullest detail, so that, for more than a year before filing their bill, plaintiffs not only might have been, but in fact were, fully possessed of the exact information of which the allegations in question profess ignorance.

And especially are the allegations of the bill respecting certain civil suits against the District Company, and the indictment of Engle, both immaterial and also scandalous and malicious.

Turning to the essentials of the case sought to be made by the bill, these may be treated as follows:

1. The alleged interests of plaintiffs in the premises. The capital stock of each defendant Company is \$25,000,000, represented by 250,000 shares, of the par value of \$100 each. Of these 250,000 shares defendant Engle and his assigns and transferees hold 200,000, the remaining 50,000 being in the Company's treasury. Plaintiffs are fifty-four (54) in number, and the aggregate of their holdings in the District Company is seventy-two and one-half ($72\frac{1}{2}$) shares, and in the Arizona Company eight (8) shares, of the total 200,000 shares outstanding. The bill is subscribed by but nine (9) of the fifty-four (54) plaintiffs, holding together twenty-four (24) shares of the District Company and one (1) share of the Arizona Company. The aggregate holdings of the entire fifty-four (54) plaintiffs thus amount to but a minute fraction over one one hundred and twenty-five one-hundredth of the number of shares of the entire stock outstanding. (Answer, Par. 5; Rec., 16-17.) Besides their interests as stockholders, plaintiffs claim to have interests as security owners of the District Company, but the bill wholly fails to set forth or describe what securities of the Company plaintiffs claim to have, or the extent of the interest of any one of plaintiffs therein.

The securities are mentioned in the bill as "State Option Contracts" (Par. 7; Rec., 5-6), but are not otherwise described in the pleadings than in the answer, as above. These options, instead of being securities of the District Com-

pany, were, as appears, merely agreements in accordance with which, in consideration of the purchase at par of certain shares of stock of the District Company, and the actual organization of a subsidiary company, and the purchase at par of certain shares of stock thereof, the holder of each option should have the privilege, to the exclusion of others, of organizing such subsidiary company in each particular instance, and upon the purchase at part of the prescribed number of shares of stock thereof, should receive by way of bonus, in remuneration of his early participation, investment and promotion services in the premises, certain additional shares of stock of the subsidiary company; so that each of the said options, so-called, was in fact and in law a bipartite agreement. Upon the performance, by the holder of said options, of his undertakings in the premises, and upon such performance only, he became entitled to the exclusive privilege of organizing the subsidiary company concerned, and of obtaining the certain shares thereof as bonus, as aforesaid.

Whatever may be thought by some of the prudence and feasibility of such an arrangement, it is the arrangement which was entered into by and between the District Company and Engle, of one part, and the holder of the option, of the other; and it may be remarked, in passing, that in taking over the assets of the District Company, the Arizona Company assumed all the obligations of the former, including as, of course, the obligations incident to these options.

This, however, is beside the immediate object, that being to direct attention to the fact that the options in question are of a character requiring performance on the part of the holders before the supervening of obligations on the part of the Company; and not only does the bill not indicate which of such options are claimed to be held by plaintiffs, or any of them, but also it does not profess to show failure

on the part of either Company to meet such obligations when incurred.

And the other general allegations of the bill as to the incapacity of the Arizona Company to meet such obligations are, in the fullest sense, negligible, seeing that, as by the bill itself admitted, the Arizona Company took over and possesses all, and identically the same, assets of the District Company, by reason of possessing which the latter would alone be enabled to meet the said obligations.

Apart from the fact that the generality of the allegations of the bill, respecting the alleged interests of plaintiffs in these so-called securities, is such as to make them, upon every principle, wholly insufficient to entitle them to consideration or even notice on the part of the Court, it is clear that no single allegation of the bill in this behalf points to the existence of any indebtedness of the District Company to plaintiffs, or any of them, so as to entitle them to be regarded as creditors of the Company; the most that can be said of the allegations is that they point to the existence of contract relations under which no obligations on the part of the Company are shown to have arisen, or as likely to arise; wherefore, the assumed right of plaintiffs to bring any suit against the Company in respect of the said so-called securities disappears, leaving plaintiffs to only such rights, if any, as they may have to maintain their suit on the ground of being stockholders of the Company. As is set forth in the answer (Par. 24; Rec., 29), the bill wholly fails to show that, prior to filing their complaint, plaintiffs made any application to, or effort with the directors or officials, or any one of them, of either of the defendant companies, to have rectified by the said directors or officials the alleged grievances of plaintiffs in the premises, or to have the said directors or officials institute any proceeding or take any

action in any Court respecting the matters and things complained of, or call or request any meeting of the stockholders of the companies, or either of them, to take action in respect thereof; nor does the bill profess to show that either the said directors or officials would, if called upon, not have taken action in the premises, to the end of testing the validity and sufficiency of the proceeding complained of; wherefore plaintiffs, by their bill, utterly fail to show any ground upon which, as stockholders, they are entitled to maintain their suit.

2. Assuming, however, that plaintiffs have a standing in Court sufficient to enable them to file a bill as stockholders, and considering the essentials of the bill as above set forth, what is the supposed ground of complaint of plaintiffs, and to what, if any, remedy are they entitled?

Apart from the general and sweeping allegations of fraud and misconduct, usually to be found in such bills of complaint—each and every of which allegations is fully and specifically denied by the answer—the gist of the bill is as follows:

In consideration of the transfer by him of his invention and the letters patent relating thereto, to the District Company (which was at the time it was known as the Dynelectron Company), Engle received the entire capital stock of the Company, of which he put 50,000 shares in the treasury of the Company, retaining the remaining 200,000 shares as his own. This gave him such control of the Company as to make it practically a one-man concern, and by choosing his own directors and officers, and having himself constituted President, General Manager and sole Executive Committee of the Company, Engle dominated it and conducted its affairs in a manner involving recklessness and waste. The moneys received by Engle through the State Option

Contracts above described, he received in payment for stock of his own holdings, and by reason thereof claimed the right to spend and apply the moneys as he might see fit. The fact that the moneys thus received by Engle were so received in accordance with the option contracts, of which plaintiffs claimed to be the holders, is disregarded by the bill, which proceeds to allege the arising of certain difficulties, complications and dissatisfactions in the course of the Company's affairs, to the threatened injury of plaintiffs and their vested rights, so-called. Through Engle's domination and control, the District Company attempted to turn over its entire assets and properties to the Arizona Company, without any valuable consideration accruing to the District Company or to plaintiffs, and in breach and derogation of their rights. The Arizona Company has no property or assets other than those attempted to be turned over to it by the District Company, and plaintiffs believe that if the Arizona Company is permitted to continue in possession of the property, assets and franchises of the District Company, the rights of the plaintiffs as holders of the securities and stock of the District Company will be entirely dissipated, and the value of their said securities and stock destroyed. Plaintiffs have not realized or been paid anything on account of their securities of the District Company from the proceeds of the sale of its assets to the Arizona Company, nor have they been offered any option contracts in the new corporation or anything else of value for their securities in the District Company.

It is not alleged, nor is it shown, even by implication, that plaintiffs ever became or were entitled to receive anything from the District Company on account of their alleged securities, and the fact is that whatever plaintiffs, as holders of the said option contracts were to receive thereunder, was to come from Engle himself in the form of portions of his stock in the District Company, and certain of

the stock of the subsidiary companies which it was the undertaking of plaintiffs, as holders of the said option contracts, to create and organize; wherefore, at no point and under no conditions was the District Company obligated, or to become obligated, to plaintiffs in respect of anything, and such being the case there is absolutely no foundation for the pretense that plaintiffs were entitled by virtue of the said option contracts to receive anything from the Arizona Company by reason of its having taken over the assets, and assumed the obligations, of the District Company.

Whatever may be thought of the nature of the relations into which plaintiffs voluntarily came by becoming parties to the State Option Contracts is beside the question; which is, what rights did they, by virtue of their contracts, acquire against either of defendant companies?

Their supposed rights thus appearing, plaintiffs complain of the attempted transmutation of the District Company into the Arizona Company, the reasons for which are fully set forth in the answer (Par. 18; Rec., 23-4), and also clearly appear from Exhibit A thereto (Rec., 30-2), being the notice to the stockholders of the District Company of the adoption of the necessary preambles and resolutions in the premises, and a call to the stockholders in accordance therewith to exchange their stock in the District Company for that of the Arizona Company. As appears from the answer, the action of the stockholders of the District Company was taken at a meeting duly called and held at which all but 658 shares of the 200,000 shares of the Company outstanding were represented, and the action was taken by a vote of 199,337 of the said 200,000 shares (Rec., 23-4, Fol. 42). Pursuant to the call of Exhibit A to the answer, the holders of 199,739½ shares of the District Company exchanged their holdings for equivalent shares of the Arizona Company, leaving outstanding and unexchanged only

260½ of the outstanding 200,000 shares. In accordance with the plan and its adoption by the action of the stockholders of the District Company, that Company turned over all of its assets and properties of what kind soever to the Arizona Company, upon condition of the assumption by the latter of all of the obligations of the former, which obligations the latter assumed, making the situation the simple one of the assumption by the new Company of all the obligations of the former, upon being supplied and receiving all of the resources which the old Company had to enable it to meet the obligations transferred and assumed. Very clearly, the assumption by the new Company of the obligations of the old was a perfectly good, valid, and sufficient consideration for the transfer by the old Company of its assets to the new.

The bill questions and attacks the propriety, validity and efficacy of the transaction thus appearing, and this, and this only, is the case of plaintiffs.

3. The transaction in question was not only prudent, but also absolutely essential to the enterprise in hand, and the preservation of the rights of all interested therein; and it has the clear support of both principle and authority.

The cases in which the right of a majority of the stockholders of a private corporation to turn over its assets and resources to another similar corporation to carry on the business for which it was organized, or to form a new corporation for the purpose, are numerous, and by no means harmonious. The earlier cases quite generally deny the existence of this right, but the later, and many of them well considered cases, very materially qualify this view.

The fundamental principle of the earlier cases is that the relations between a corporation and its stockholders are contractual and can not be changed without the consent of

all parties to the contract involved in the formation of the corporation, and the acquirement of membership therein by the stockholders. Accordingly, it has been frequently said that no stockholder of a corporation may be compelled against his consent to become a member of another and a different corporation, or to have his investment in the corporation devoted to another purpose than that for which the investment was made.

Obviously, however, to press this view to its logical extent would amount to saying that a corporation may be dominated by the minority of its stockholders, instead of being left to the control of the majority, who in ordinary have the right to determine the policy and administer the affairs of the corporation; and while it is well settled that neither the directors nor a majority of the stockholders have power, as against the dissent of any stockholder, to sell all, or substantially all, of the property of a prosperous, going corporation, it is equally well settled that a minority of the stockholders of a corporation can not hold a majority to an unprofitable and hopeless enterprise, and that when just cause exists,—such as the insolvency of a corporation, or its financial inability, though solvent, to carry out the purpose of its creation, or the unprofitableness of its business, so that the continuance thereof would be disastrous to the corporation and against the interests of the stockholders, or the expiration of its charter,—a majority of the stockholders, acting in good faith, may, even against the consent of a minority, sell all of the corporate property, with a view to winding up the corporate affairs.

Cook, Corp., 6th Ed., §670;

Thomp. Corp., 2d Ed., §2424;

Clark & M. Priv. Corp., Pg. 160 (a);

Phillips vs. Providence Steam Engine Co., 21 R. I., 302, 45, L. R. A., 560, 43 Atl., 598.

The directors of a manufacturing corporation, as the best means of continuing the business, and pursuant to the votes of a majority of the stockholders, though against the protest of a minority, may sell the whole property of the corporation to a new corporation, taking payment in shares of the new corporation, to be distributed among those of the old stockholders who are willing to take them.

Treadwell vs. Salisbury Mfg. Co., 7 Gray, 393.

And a sale of all the property of a corporation pursuant to a resolution of the majority of its members, is not necessarily void, nor should it be set aside at the suit of the dissenting stockholders, regardless of the consequences, merely because not all of the stockholders consent.

Tanner vs. Lindell R. R. Co., 180 Mo., 1.

If this be so, it is on principle difficult to see why, when a corporation finds itself for any reason unable, under its existing charter or organization, to carry out the objects for which it was formed, it may not, so to speak, transmute itself into another corporation having the same objects, using the same resources, and preserving the respective relations of all of the stockholders to the enterprise.

The subject has recently (July, 1913) had full and careful attention in an exceptionally well-considered case, from the opinion in which the following extract calls for no apology because of its length.

“The basic contention of the plaintiff is that the sale of the business and assets of the Des Moines Life Company is in law and equity tantamount to a dissolution of that corporation, and that the dissolution of a corporation, upon the expiration of its charter period can not be legally effected, or the business for which it was organized abandoned, except by the unanimous consent

of all its stockholders. It is to be admitted that this rule, stated in a general way, has the support of numerous authorities, most of which are collected in appellant's brief. The leading and most frequently cited decision to this effect is *Abbott vs. American Hard Rubber Co.*, 33 Barb. (N. Y.), 578. It is perhaps open to fair doubt whether the question was necessarily involved in that case, but it has undoubtedly been treated as an authority, and not infrequently followed. See *Forrester vs. B. & M. Co.*, 21 Mont., 544 (55 Pac., 229, 353); *People vs. Ballard*, 134 N. Y., 269 (32 N. E., 54, 17 L. R. A., 737); 4 Thompson's Corp. (2d Ed.), section 4489, and cases there cited.

"But the doctrine has by no means the unanimous support of the precedents, and it has frequently been held that its strict enforcement would neutralize the efficiency of that other and necessary rule to which every stockholder impliedly agrees in becoming a member of a corporation, that the management and control of the corporate business and interest shall be vested in the majority. See *Treadwell vs. Mfg. Co.*, 7 Gray (Mass.), 393 (66 Am. Dec., 490); *Bowditch vs. Jackson*, 76 N. H., 357 (82 Atl., 1014, Ann. Cas., 1913-A, 366); *Lauman vs. R. R. Co.*, 30 Pa., 42 (72 Am. Dec., 685); *Ritchie vs. Mining Co.*, 1 Ont. L. R., 654; *Arents vs. Tobacco Co.* (C.C.), 101 Fed., 338; *Maben vs. C. & C. Co.*, 173 Ala., 259 (55 South. 607, 35 L. R. A. (N. S.), 396.

"The rule of the *Abbott* case has been mentioned *arguendo* by this court as affording a general standard by which corporate powers are restricted. *Traer vs. Prospecting Co.*, 124 Iowa, 112. But while frequently called upon to hold invalid the sale of all the property of a corporation, we have never applied or enforced the rule relied upon by the appellant. Looking to our decisions having any legitimate bearing upon the issues now presented, we find fairly sustained the proposition that, when the majority of the stockholders of a business corporation, acting without fraud and upon reasonable grounds, conclude that the exigencies of the business in which it is engaged and the best interests

of all concerned therein require a sale of the property and a liquidation of the corporate affairs, equity will not interfere to prevent the consummation of such transaction at the suit of one or more minority stockholders, especially where it appears that the protesting members are not likely to suffer any injury for which there is no other adequate remedy. For example, while stating the general rule of the *Abbott* case, it has been held that when insolvent or in a failing condition the corporation may sell all of its property without the unanimous consent of its stockholders. *Traer vs. Prospecting Co.*, 124 Iowa, 112.

"Where a minority stockholder was given no notice of a meeting at which the sale of the corporate assets was authorized (it being known to the majority that he was opposed to the transaction), the sale was held to be valid; it appearing that the financial condition of the corporation made it advisable, and no fraud being disclosed. *Sawyer vs. Printing Co.*, 77 Iowa, 242.

"The same question arose in *Price vs. Holcomb*, 89 Iowa, 135, and it was there said:

" 'It is unquestionably true that a private corporation holds its property as a trust fund for the stockholders * * * and that when the stockholders act together they are in a sense the corporation, and must act with due regard to the right of the minority. If the majority decide arbitrarily, and without just cause, to sell the property of the corporation to the prejudice of the minority, and thereby compel the winding up of the business * * * it is a fraud upon the minority, and courts of equity will interfere. If, however, just cause exists for selling the property, as where the corporation is insolvent and the selling is necessary to pay debts, or where * * * the business is a failure * * * and the best interests of all require it, the majority have clearly power to order the sale, and in such case their acts are not *ultra vires*.'

"While the cases here cited present instances of sales made under conditions of financial embarrassment, it is nowhere held that insolvency and financial stress af-

ford the only occasion for the exercise of such power. Indeed the rule as stated in *Price vs. Holcomb*, *supra*, fairly implies that such power may be exercised where any 'just cause' exists therefor. In *Platner vs. Kirby*, 138 Iowa, 265, this court appears to have interpreted the effect of its former holdings in harmony with the view, saying that 'in this state we have recognized the right of the majority to determine whether the corporation shall be continued or wound up.' This position finds support in precedents from other states already cited.

"Speaking of the stockholders of a business corporation, Judge Bigelow of the Massachusetts Court has said: 'By accepting a charter they do not undertake to carry on the business for which they are incorporated indefinitely, and without any regard to the condition of their corporate property. Public policy does not require them to go on at a loss. On the contrary it would seem very clearly for the public welfare, as well as for the interest of the stockholders, that they should cease to transact business as soon as, in the exercise of sound judgment, it is found that it can not be prudently continued. If this be not so, we do not see that any limit could be put to the business of a trading corporation, short of the entire loss or destruction of the corporate property. The stockholders could be compelled to carry it on until it came to actual insolvency. Such a doctrine is without any support in reason or authority.' In that case the corporation was not insolvent, but the conditions were such that means to go forward properly with the business were not available. Of the power of the majority under these conditions the court further says: 'We entertain no doubt of the right of a corporation, established solely for trading and manufacturing purposes, by a vote of the majority of their stockholders, to wind up their affairs and close their business, if in the exercise of a sound discretion they deem it expedient so to do. At common law the right of corporations, acting by a majority of their stockholders, to sell their property is absolute, and is not limited as to objects, circumstances or quantity.'

"The same line of reasoning is followed in the recent case of *Bowditch vs. Jackson*, 72 N. H., 351 (82 Atl., 1014, Ann. Cas., 1913-A, 366). The court there says, after reference to the various statements of the rule by which a corporation under proper circumstances may sell all its property :

" 'All these are fairly summed up in the statement that the majority may close out the affairs of the company when it can no longer make a reasonable profit. It is believed no court would now hold that the rights of the minority were more extensive than this rule implies. If the majority may sell to prevent greater losses, why may they not also sell to make greater gains? Bearing in mind that this is purely a business proposition, with no public rights or duties involved, there seems to be no substantial difference between the two cases, as a matter of principle. In each case the sale is made because it is of advantage to the stockholders. Whether the profit to be made is a reasonable one must be a relative matter. (Further discussing the subject the court adds :) And the question is one of future prospects. Its decision requires the exercise of business judgment, sagacity, and power to forecast coming events. It is not an issue appropriate for trial and decision in courts, but rather one to be settled by the judgment of the men conducting the business in question. In a limited sense, the majority act as trustees for all the stockholders. When their acts are impugned by the minority, it is not the function of the court to set its judgment against theirs in settling the wisdom or policy of the proposed action. By the contract of association all questions of this nature were committed to the majority for final decision (citations omitted).'

"A brief reference to the text-writers upon this question may also be of interest.

"Mr. Thompson, after quoting a judicial holding that a corporation must remain in business unless all stockholders consent to its being wound up, expresses his own views as follows :

“But it is believed that this *dictum* is unfounded when applied to a case where a majority of the stockholders elect to wind up the affairs of the corporation and distribute its assets, because, although the affairs of the corporation may at the particular time be prosperous, yet circumstances may exist rendering it probable that this prosperity will not continue; and whether such circumstances do exist, or are likely to supervene, is a question committed exclusively to the judgment of the majority. It is believed that no case can be found in which a court of equity has granted an injunction, at the suit of a minority of stockholders against the majority, to prevent them from discontinuing the business of the corporation and winding up its affairs. The exercise of such a power would be most extraordinary. It would be tantamount to compelling the specific performance of an agreement to form and carry on a corporation extending over an indefinite period of time, and when, in the judgment of the majority, on a question of mere economy and propriety, on which their judgment ought to be conclusive, it has been found more expedient to discontinue the business. (Thompson on Corporations, vol. 4, section 4443.)’

“To the same effect it is said by Mr. Morawetz:

“‘Ordinary trading corporations are formed solely for the pecuniary benefit of their shareholders. It is therefore no more than reasonable that the majority of an association of this description should have a discretionary power to give up the joint speculation, and wind up the company’s business, whenever they deem this step to be in the interest of the whole association. The law is settled accordingly; and it may be stated as a rule that it is an implied condition in the charter of every corporation, formed solely for the pecuniary profit of its shareholders, such as an ordinary trading or manufacturing corporation, that its business may be wound up whenever the majority deem this to be expedient. Under these circumstances the majority may, without the consent of the minority, sell the whole of the company’s property, close up the business, dis-

tribute the assets, and surrender the charter to the state. (1 Morawetz on Corps., Section 413.)'

"And it seems to us that when appellant concedes, as he does in argument, that the majority may sell and dispose of the corporate property and assets when the necessities of business require it, he recognizes a departure from the strict rule in the *Abbott* case, the effect of which goes distinctly beyond the limits which he asks us to lay down for the government of the present case. We have no statute which directly or by necessary implication defines the line between a valid and invalid exercise of this power. If we look to the reasons which have led the court to say that a single stockholder, who has contributed perhaps a thousandth part of the capital fund, shall not be authorized to compel the owners of the other nine hundred and ninety-nine shares to perpetuate the business of an insolvent corporation, they just as imperatively require that even a solvent corporation may be liquidated and closed out if those to whom the management of that business is committed foresee, or honestly believe they foresee, threatened perils which sound business wisdom warns them to avoid by disposing of the corporate assets and winding up its affairs. The business man who does not consult the future and lay out his course with reference to what he there discovers finds himself sooner or later involved in financial ruin. Nor can we suppose that a corporation for pecuniary profit is looking for that kind of blind leadership. If it be wise and just to say that a corporation may dispose of its assets when overcome by disasters, it is even more wise and just to say that they may do likewise to prevent disaster and preserve a solvency the permanence of which changed conditions have rendered insecure.

"The defendants herein allege that by the retirement of the persons whose skill and industry had built up the business of the Des Moines Life, and by reason of radical changes which had taken place in the field of life insurance, rendering the business more hazardous and less profitable, they were persuaded that it was for

the benefit of all concerned to withdraw from the competition and take advantage of an opportunity to sell at a figure which insured to each and every stockholder the full return of his investment with large added profit. And if this be true, and the majority saw or had reason to believe that while the business had theretofore been profitable, it had reached the high tide of its prosperity, and was quite sure to enter upon an era of declining profits and decreasing assets, which might lead the corporation to the verge of insolvency, then sound business policy and due concern for the preservation of the trust imposed upon the corporation would appear to dictate a sale and transfer of the concern while it was in condition to command the highest possible price. To say the least, there is no rule of equity to which we have ever given our adherence which requires a court to interfere by injunction to defeat a sale so made in good faith and for an adequate consideration. Whether these conditions did exist in this company, and whether the majority had any reason to anticipate changes rendering a sale of the assets and a winding up of the corporate affairs advisable as a sound business proposition, we do not stop to inquire. The defendants assert that such conditions did exist, and that the sale was made in good faith toward all stockholders. The plaintiff denies the plea thus made, and charges that the majority action was tainted with bad faith. The truth of this issue is yet to be tried, and we ought not to express any opinion upon controverted facts."

Beidenkopf vs. Insurance Co., 160 Iowa, 629, 641-7.

In that case, as in the case at bar, stress was laid upon the fact that one person owned the controlling stock in both companies; as to which the court remarked that such fact, while a circumstance bearing upon an issue of fraud, would not render a transfer of all the assets of one company to the other fraudulent *per se*. And the case is otherwise highly instructive because of its general similarity to this.

And the language of the Court in *Tanner vs. Lindell R. Co.*, 180 Mo. 1 *supra* (pp. 16-17), is equally appropriate. Says the court:

"The legal proposition which lies at the foundation of the plaintiff's case is that by the implied contract between themselves, the corporation and the other stockholders, arising out of the relation of corporation and stockholders, the property of the corporation was to be used to carry on the business for which it was created, and that it was not lawful for the board of directors, without the unanimous consent of the stockholders, to sell all of its property and thereby render it incapable of doing business. The plaintiffs say that such was the law when they invested their money in the stock of the Lindell Railway Company, that they have never consented to a change of the contract in that respect, and that neither the corporation nor the other stockholders, nor even the state itself, could impair the force of that contract.

"The legal proposition as stated by the plaintiffs is to be found in the text-books and the many decisions cited in the brief of their learned counsel, among which is our own decision in *Feld vs. Roanoke Investment Co.*, 123 Mo., 603.

"That is a principle of law founded in justice, and is applied to protect the weak against the strong—when the weak is right and the strong is wrong—it is applied to prevent or relieve against an unjust abuse of power of the majority. It is not an unqualified rule of law. None of the authorities cited says that a sale of all the property of a corporation pursuant to a resolution of a majority of its members is void. They all recognize that the majority in interest have the right to rule within reasonable bounds, and that whilst they have no right, arbitrarily or oppressively, to close out a corporation for their own advantage, yet they are not compelled to continue an unprofitable business, or to pay the minority more than their stock is worth

for the privilege of closing it up. The principle invoked by the plaintiffs is wise and just, but, since it is liable to abuse, its wisdom and justice are seen only in its application to the facts of the given case. It is, as before said, designed for the protection of the minority, but, like some other equitable principles, it is to be used as a shield, not as a sword. When, therefore, the principle is invoked in a court of equity, the case turns on a question of remedy, the Court applies the law *ex aequo et bono*, with due regard to the rights of the plaintiff, and also with due regard to the rights of the defendants and others whose interests may have become involved. Because all the stockholders have not consented to the sale it does not follow that the sale will be set aside regardless of the consequences."

4. In the light of these clear, practical and most reasonable utterances of the courts, let us, even at the risk of repetition, again consider just what is the transaction complained of.

Defendant Engle desiring to place upon the market and exploit his invention, decided to adopt the usual instrumentality of a body corporate for that purpose. Instead of forming a corporation, he acquired control of one, by name the American Dynelectron Company, already in existence in supposed compliance with the laws of the District of Columbia. To this corporation he transferred and conveyed his invention, taking in payment therefor the entire capital stock of the corporation, placing a part thereof in the Company's treasury and retaining the rest as his own. Preferring a name more suitable to the enterprise in hand, he undertook to have the name of the Company changed from the American Dynelectron Company to the American Elementary Electric Company, which he was advised might properly be done in accordance with the provisions of Sec-

tions 1298-1300 of the Code of Law for the District of Columbia.

The plan in accordance with which the exploitation of the invention was entered upon had, as its central feature, the organization throughout the several States of the United States of local corporations, subsidiary to the District Company as a parent company, the latter to hold a certain proportion of the stock of each local company and to be represented in the directory thereof. This plan was entered upon, and in furtherance thereof the State Option Contracts mentioned in the bill were given, and the holders thereof interested various individuals in the enterprise.

Certain differences and difficulties in the carrying out and progress of the enterprise having arisen, and the Company and Engle having become involved in various litigations, and a condition of discord and embarrassment having resulted, Engle sought counsel in the premises, and was advised as follows: First, that in accordance with the decisions of this Court, notably in the case of *Dancy vs. Clark*, 24 App. D. C., 487, the charter of the company, because of the objects for which it professed to have been organized (Rec., 17-18, Fol. 30-1), if not void was at least voidable upon the institution of due proceedings in that behalf; secondly, that the change of name of the Company was of doubtful validity, as the sections of the Code above referred to would plainly seem to contemplate individuals only and not corporations; and, thirdly, that under the laws relating to corporations in the District of Columbia, no corporation thereunder can hold stock in another, or become, or be, such a holding or parent company as the plan entered upon contemplated; wherefore, the Company stood in imminent peril of being adjudged to be no corporation, and of having its supposed charter vacated and its affairs brought to an abrupt winding up.

That defendants were soundly advised that, if not actually invalid, the articles of incorporation of the District Company are voidable, can not be questioned in the light of the opinion of this Court in *Dancy vs. Clark*, 24 App. D. C., 487, wherein it is held, that under sub-chapter 4 of the District Code, a company can not be incorporated to do all the classes of business for which corporations may be formed under that sub-chapter, but can be incorporated only to engage in one such business or enterprise, and that the provision of Section 633 of the Code, that a company incorporated for one class of business may, upon compliance with certain conditions, extend its business to any other business authorized by the general incorporation law, means the extension of business by the taking in of something cognate to the business to engage in which the company was originally incorporated.

The objects for which the District Company, by its original name of American Dynelectron Company, professed to be formed, are set forth in the record (pp. 17-18), and hereinabove. (*Ante*, p. 13.) That a corporation to accomplish all such objects can not lawfully be formed under the laws of the District of Columbia, is too plain for discussion; and that any one of the professed objects can be selected as the primary one, and the others be found cognate thereto, is impossible. In seeking to ascertain the primary object of the corporation, if such there be, the obvious rule of construction would require the selection of the first, namely, "for the purpose of conducting a general manufacturing business in all details, anywhere in the world;" and all will agree, without discussion, that a corporation may not be formed for such purpose under the laws of the District; wherefore, in the attempted creation of the corporation, there was, in contemplation of law, no primary object of its formation to which its other objects could be said to be cognate; in a word, the body was stillborn.

Nor does the rule, sometimes applied, that the mere fact that the intending incorporators claim greater powers or privileges than the governing statute allows, will not necessarily prevent them from becoming incorporate, since the law will reject the excessive claim as surplusage, find application in the premises; for that it is not a case of the intending incorporators claiming certain valid and certain invalid powers, but of undertaking to claim all powers possible under the law, which is not permissible; and, moreover, it is impossible from the statement of the objects of the incorporation to select any one in relation to which the others, or any of them, may be said to be in the category of surplusage. And it being thus impossible to indicate, in the purposes enumerated, which is the primary or central object of incorporation, there is no possible test whereby the others may be made the subject of rejection.

And that Sections 1298-1300 of the Code, providing for change of name, have no application to the case of a corporation, would not seem to admit of discussion.

The provisions of those sections manifestly have reference only to natural persons.

Section 1298, as it originally stood, provided that

“Any person of full age, being a resident of the District and desirous to have his name changed, may file a petition in the supreme court setting forth the reasons therefor, and also the name desired to be assumed.”

As amended, the section reads:

“Any person, being a resident of the District, desiring a change of name may file a petition in the supreme court holding an equity term, setting forth the reasons therefore, and also the name desired to be assumed. In case the applicant is an infant, such pe-

tition shall be filed by the parent, guardian, or next friend to said infant. The court shall have power, in its discretion, to grant the prayer of such petition."

It is difficult to argue against the contention that this provision has reference to any but natural persons. The contention rests upon the following portion of the third rule for interpretation and construction of the Code, namely:

"Third. The word 'person' shall be held to apply to partnerships and corporations, unless such construction would be unreasonable."

A corporation is in law an artificial person, and, under the law of the District of Columbia, can be created only by the making, signing, acknowledging, and filing a certificate of incorporation, in which certificate the corporate name of the company must be stated; and while the Code (Section 633) provides for an increase or diminution of capital stock, and the extension of the business of the corporation to any other business authorized by the Code, the doing either is required to be evidenced by a certificate, duly acknowledged and filed, and it is upon the filing only of such certificate that the capital stock is increased or diminished, or the business extended or changed accordingly (Code, Section 638); and to either an increase or diminution of the capital stock, or the extension or change of business, a vote of at least two-thirds of all the shares of the stock of a company given in stockholders' meeting is necessary. (Code, Sections 635-639.)

Now nothing is more an essential to a corporation than its corporate name; it is that by which it is known to the public as a person, and it is that by which alone it may sue or be sued, assert and protect its corporate rights or those of its stockholders; and to permit the change of such an essen-

tial to its corporate existence and character, by a mere application of its officers to the court, would be, in the language of this Court in the case of *Dancy vs. Clark*, *supra* (p. 506), to permit it "to become a snare to the unwary." The possibilities incident to, and consequent upon, the permission of such a procedure are self-suggesting and provoke their own comment.

And that a corporation, under the laws of the District of Columbia, may, as a corporation, hold stock in any other corporation, will not be seriously contended. Directly to the contrary are the provisions of Section 620 of the Code and the decision of this Court in *Ambler vs. Archer*, 1 App. D. C., 94, 104.

It was upon the advice thus received that the determination was reached to form a new corporation, under the laws of an available jurisdiction, to do identically that which the District Company had been undertaking to do, and with full and exact preservation to all the stockholders of their respective interests—a step taken in the best of faith, and the effect of which would merely be to put the enterprise in the shape and on a footing assumed by everyone when becoming a stockholder in the District Company.

To this end, on September 1, 1914, the directors of the Company, by resolution, called a meeting of the stockholders to be held October 6, 1914, of which meeting every stockholder was informed by a notice giving, in fullest detail, the reasons for the proposed step, and calling upon every stockholder to be present for consideration of the same. The meeting of stockholders was accordingly held, there being represented thereat all but 658 out of 200,000 shares of stock outstanding, and plaintiffs, stockholders in the Company, had full and ample opportunity and notice to be present and to participate in the meeting. By an over-

whelming vote, the proposition of the directors was approved, and the action set forth in Exhibit A to the answer (Rec., 30-32) taken.

In accordance with this action, the assets of the District Company were assigned and transferred to the new company, which accepted the obligations of the old, and the holders of all but $260\frac{1}{2}$ of the entire 200,000 shares surrendered their stock for cancellation, and took in lieu thereof stock to an equivalent amount in the new company.

Under the new corporation the business of carrying out the enterprise in hand was continued for more than a year without any step taken by plaintiffs, or any of them, and it was not until October 23, 1915, that their bill was filed.

It is under such circumstances that plaintiffs, holders of but $80\frac{1}{2}$ shares of the entire 200,000 shares outstanding, filed their bill to have the transaction narrated vacated, and the affairs of the Company thrown into the hands of a receiver, with the inevitable result of putting an end to the enterprise; and this the court is asked to do against the will of substantially the unanimous body of stockholders.

5. Recurring to the allegations of the bill, upon which this drastic and destructive action is asked to be taken, the generality and insufficiency of these allegations is again to be noted.

In this behalf it is not necessary to go for authority beyond the case relied upon by the court below for its action, namely, *Post. vs. Beacon Vacuum Pump, etc., Co.*, 84 Fed. Rep., 371, decided by the United States Circuit Court of Appeals for the First Circuit, and affirming the action of the Circuit Court in refusing to rescind the action complained of.

In that case the majority of the stockholders of a corporation, by vote, agreed to a reorganization, and the trans-

fer of its property and business to a new corporation, in consideration of the issuance to the stockholders of a certain amount of the stock of the new company, and the privilege to such stockholders of subscribing for the remainder at a fixed price. After the plan was executed and the transfer made, certain minority stockholders filed their bill to have this action rescinded, and their allegations, while even less general than those in the case at bar, were thus spoken of by the Court in its opinion (pp. 373-6) :

"It may well be questioned whether there is sufficient in these allegations to show that the Pump Company was financially capable of pursuing its business, or that its assets, if it had been wound up, would have yielded any substantial dividend to its stockholders. * * *

"A bill seeking a result which may be so destructive to the interests of other stockholders as this might be if its principal prayer were granted should support itself by decisive allegations. The general rule is that the essential parts of a bill in equity should be stated positively and with precision. Story, Eq. Pl. (10th Ed., Secs. 255-6.) This is especially insisted on where a remedy is sought by an injunction or a rescission, the result of which may not only compensate the party injured, which is all the common law ordinarily gives, but may impair the interest of the adverse party to a vastly disproportionate extent. The underlying principle is stated in the following cases, although applied there from an aspect different from that at bar: *Grymes vs. Sanders*, 93 U. S., 55, 62; *United States vs. American Bell Telephone Company*, 167 U. S., 224, 241; 17 Sup. Ct., 809. The common law gives relief on a mere preponderance of proofs; but it is certain that, in cases of the class we are considering, equity does not act unless the proofs are clear. The underlying reasons which require this require also that the allegations which the proofs are to sustain be clear to the effect that

the complainant has suffered, or is threatened with, an injury so substantial as to demand not only compensation, but also specific relief by rescission, even while this may cause a loss to others as to which his own would be comparatively trifling. * * *

"It is well to understand the precise nature of the proceedings against which the complainants protest. What was attempted and done by the Pump Company was not *ultra vires* in every sense of the term. No question of public policy was involved, and it was all permissible with the consent of all the stockholders; and, if it had been once accomplished with their approval, it could not have been rescinded by either the state or any parties in interest, unless by creditors prejudiced thereby, if there were any so prejudiced. Therefore, if the question involved is one of *ultra vires*, it is so in a modified way only; that is to say, it concerns only the contractual relations between the stockholders and the corporation, as to which the stockholders might waive their rights, either expressly or impliedly; or, under certain circumstances, any stockholder might become estopped from making a denial of a waiver. * * *

"A rule at law is often one thing, and the right to relief in equity a very different matter. Equity will not raise its hand to give a specific relief, and rescind and annul important transactions as to which there is no charge of a dishonest purpose, and which, if not interfered with, may give great profit to parties interested in them, or at least prevent them from suffering great loss, at the demand of a party who does not show clearly and definitely a valuable and substantial interest, which has been unlawfully disregarded, or is in danger thereof, and who does not, under the circumstances of the case at bar, show that he has consistently maintained a position in protection of his rights adverse to the majority interest, or that he has had no opportunity so to do. Indeed, the rule was well stated by Mr. Justice Field in *Dimpfell vs. R. R. Co.*, 110 U. S., 209; 3 Sup. Ct., 573, to the effect that the equity courts will not interfere in matters of this char-

acter merely because there may be a doubt as to the authority sustaining the proceedings, or as to their wisdom, nor unless a real and substantial grievance exists. A convenient collection of authorities illustrating this proposition will be found in *Bassett vs. Manufacturing Co.*, 47 N. H., 426."

6. This case is also instructive in its application of the principle of *laches*, equally applicable in the case at bar.

As has been seen, the directors of the District Company resolved on September 1, 1914, to call a meeting of the stockholders to consider the contemplated action. That meeting was held October 6, 1914, and the action taken. On October 17, 1914 (Rec., 30), every stockholder of the Company was notified of the action, and invited to exchange his stock for that of the new company, and all but 260½ shares were so exchanged.

For more than a year after the action taken, and even after the notification thereof to the stockholders as aforesaid, namely, on October 23, 1915, complainants filed their bill. In the meanwhile the new company undertook to continue in the enterprise for which the old company had been organized, and had throughout this period of more than one year been so doing in justifiable confidence in the belief that the action taken had been acquiesced in by plaintiffs, to the extent at least of permitting the new company to make the experiment of a successful exploitation and accomplishment of the enterprise in hand; and there is no allegation in the bill tending to show any mismanagement by the new company in the premises.

In the light of this, plaintiffs, an almost infinitesimal fraction of those interested, should surely not now be heard to demand, against the overwhelming majority of those concerned, that the endeavor to carry on the enterprise, along the identical lines of its inception and contemplation,

and with identically the same original resources, should be blocked, and in effect destroyed, especially upon a preliminary application, and in advance of full inquiry by the court into the circumstances of the case.

Respectfully submitted,

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